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THE MISCELLANEOUS WRITINGS

OF

JOHN FISKE

WITH MANY PORTRAITS OF ILLUSTRIOUS PHILOSOPHERS, SCIENTISTS, AND OTHER MEN OF NOTE

IN TWELVE VOLUMES

VOLUME XII

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CIVIL GOVERNMENT
IN THE UNITED STATES
CONSIDERED WITH SOME REFERENCE TO ITS ORIGINS

BY

JOHN FISKE

Αἴσσομαι, παῖ Ζηνὸς Ἐλευθερίου,
Ἰμέραν εὐρυσθενέ' ἀμφιπόλει, Σώτειρα Τύχα·
τὶν γάρ ἐν πόντῳ κυβερνῶνται θοαὶ
νᾶες, ἐν χέρσῳ τε λαιψηροὶ πόλεμοι
κἀγοραὶ βουλαφόροι.
PINDAR, *Olymp.*, xii.

Thou, too, sail on, O Ship of State!
Sail on, O Union, strong and great! . . .
Our hearts, our hopes, are all with thee.
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o'er our fears,
Are all with thee, — are all with thee!
LONGFELLOW

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Dedication

THIS LITTLE BOOK IS DEDICATED, WITH THE AUTHOR'S BEST WISHES AND SINCERE REGARD, TO THE MANY HUNDREDS OF YOUNG FRIENDS WHOM HE HAS FOUND IT SO PLEASANT TO MEET IN YEARS PAST, AND ALSO TO THOSE WHOM HE LOOKS FORWARD TO MEETING IN YEARS TO COME, IN STUDIES AND READINGS UPON THE RICH AND FRUITFUL HISTORY OF OUR BELOVED COUNTRY

PREFACE

SOME time ago, my friends, Messrs. Houghton, Mifflin & Co., requested me to write a small book on Civil Government in the United States, which might be useful as a text-book, and at the same time serviceable and suggestive to the general reader interested in American history. In preparing the book certain points have been kept especially in view, and deserve some mention here.

It seemed desirable to adopt a historical method of exposition, not simply describing our political institutions in their present shape, but pointing out their origin, indicating some of the processes through which they have acquired that present shape, and thus keeping before the student's mind the fact that government is perpetually undergoing modifications in adapting itself to new conditions. Inasmuch as such gradual changes in government do not make themselves, but are made by men — and made either for better or for worse — it is obvious that the history of political institutions has serious lessons to teach us. The student should as

soon as possible come to understand that every institution is the outgrowth of experiences. One probably gets but little benefit from abstract definitions and axioms concerning the rights of men and the nature of civil society, such as we often find at the beginning of books on government. Metaphysical generalizations are well enough in their place, but to start with such things — as the French philosophers of the eighteenth century were fond of doing — is to get the cart before the horse. It is better to have our story first, and thus find out what government in its concrete reality has been, and is. Then we may finish up with the metaphysics, or do as I have done — leave it for somebody else.

I was advised to avoid the extremely systematic, intrusively symmetrical style of exposition, which is sometimes deemed indispensable in a book of this sort. It was thought that students would be more likely to become interested in the subject if it were treated in the same informal manner into which one naturally falls in giving lectures to young people. I have endeavoured to bear this in mind without sacrificing that lucidity in the arrangement of topics which is always the supreme consideration. For many years I have been in the habit of lectur-

ing on history to college students in different parts of the United States, to young ladies in private schools, and occasionally to the pupils in high and normal schools, and in writing this little book I have imagined an audience of these earnest and intelligent young friends gathered before me.

I was especially advised — by my friend Mr. James MacAlister, superintendent of schools in Philadelphia, for whose judgment I have the highest respect — to make it a *little* book, less than three hundred pages in length, if possible. Teachers and pupils do not have time enough to deal properly with large treatises. Brevity, therefore, is golden. A concise manual is the desideratum, touching lightly upon the various points, bringing out their relationships distinctly, and referring to more elaborate treatises, monographs, and documents, for the use of those who wish to pursue the study at greater length.

Within limits thus restricted, it will probably seem strange to some that so much space is given to the treatment of local institutions, — comprising the governments of town, county, and city. It may be observed, by the way, that some persons apparently conceive of the state also as a "local institution." In a recent re-

view of Professor Howard's admirable "Local Constitutional History of the United States," we read, "The first volume, which is all that is yet published, treats of the development of the township, hundred, and shire; the second volume, we suppose, being designed to treat of the State Constitutions." The reviewer forgets that there is such a subject as the "development of the city and local magistracies" (which is to be the subject of that second volume), and lets us see that in his apprehension the American state is an institution of the same order as the town and county. We can thus readily assent when we are told that "many youth have grown to manhood with so little appreciation of the political importance of the state as to believe it nothing more than a geographical division."[1] In its historic genesis, the American state is not an institution of the same order as the town and county, nor has it as yet become depressed or "mediatized" to that degree. The state, while it does not possess such attributes of sovereignty as were by our Federal Constitution granted to the United States, does, nevertheless, possess many very important and essential characteristics of a sovereign body. The study of our state governments is inextricably wrapped up

[1] Young's *Government Class Book*, p. iv.

with the study of our national government, in such wise that both are parts of one subject, which cannot be understood unless both parts are studied. Whether in the course of our country's future development we shall ever arrive at a stage in which this is not the case, must be left for future events to determine. But, if we ever do arrive at such a stage, "American institutions" will present a very different aspect from those with which we are now familiar, and which we have always been accustomed (even, perhaps, without always understanding them) to admire.

The study of local government properly includes town, county, and city. To this part of the subject I have devoted about half of my limited space, quite unheedful of the warning which I find in the preface of a certain popular text-book, that "to learn the duties of town, city, and county officers, has nothing whatever to do with the grand and noble subject of Civil Government," and that "to attempt class drill on petty town and county offices, would be simply burlesque of the whole subject." But, suppose one were to say, with an air of ineffable scorn, that petty experiments on terrestrial gravitation and radiant heat, such as can be made with commonplace pendulums and tea-

kettles, have nothing whatever to do with the grand and noble subject of Physical Astronomy! Science would not have got very far on that plan, I fancy. The truth is, that science, while it is perpetually dealing with questions of magnitude, and knows very well what is large and what is small, knows nothing whatever of any such distinction as that between things that are "grand" and things that are "petty." When we try to study things in a scientific spirit, to learn their modes of genesis and their present aspects, in order that we may foresee their tendencies, and make our volitions count for something in modifying them, there is nothing which we may safely disregard as trivial. This is true of whatever we can study; it is eminently true of the history of institutions. Government is not a royal mystery, to be shut off, like old Deiokes,[1] by a sevenfold wall from the ordinary business of life. Questions of civil government are practical business questions, the principles of which are as often and as forcibly illustrated in a city council or a county board of supervisors, as in the House of Representatives at Washington. It is partly because too many of our citizens fail to realize that local government is a worthy study, that we find it making so

[1] Herodotus, i. 98.

much trouble for us. The "bummers" and "boodlers" do not find the subject beneath their notice; the Master who inspires them is wide awake and — for a creature that divides the hoof — extremely intelligent.

It is, moreover, the mental training gained through contact with local government that enables the people of a community to conduct successfully, through their representatives, the government of the state and the nation. And so it makes a great deal of difference whether the government of a town or county is of one sort or another. If the average character of our local governments for the past quarter of a century had been *quite* as high as that of the Boston town-meeting or the Virginia boards of county magistrates, in the days of Samuel Adams and Patrick Henry, who can doubt that many an airy demagogue, who through session after session has played his pranks at the national capital, would long ago have been abruptly recalled to his native heath, a sadder if not a wiser man? We cannot expect the nature of the aggregate to be much better than the average natures of its units. One may hear people gravely discussing the difference between Frenchmen and Englishmen in political efficiency, and resorting to assumed ethnological causes to explain it, when,

very likely, to save their lives they could not describe the difference between a French commune and an English parish. To comprehend the interesting contrasts between Gambetta in the Chamber of Deputies, and Gladstone in the House of Commons, one should begin with a historical inquiry into the causes, operating through forty generations, which have frittered away self-government in the rural districts and small towns of France, until there is very little left. If things in America ever come to such a pass that the city council of Cambridge must ask Congress each year how much money it can be allowed to spend for municipal purposes, while the mayor of Cambridge holds his office subject to removal by the President of the United States, we may safely predict further extensive changes in the character of the American people and their government. It was not for nothing that our profoundest political thinker, Thomas Jefferson, attached so much importance to the study of the township.

In determining the order of exposition, I have placed local government first, beginning with the township as the simplest unit. It is well to try to understand what is near and simple, before dealing with what is remote and complex. In teaching geography with maps, it

is wise to get the pupil interested in the streets of his own town, the country roads running out of it, and the neighbouring hills and streams, before burdening his attention with the topographical details of Borrioboola Gha. To study grand generalizations about government, before attending to such of its features as come most directly before us, is to run the risk of achieving a result like that attained by the New Hampshire school-boy, who had studied geology in a text-book, but was not aware that he had ever set eyes upon an igneous rock.

After the township naturally comes the county. The city, as is here shown, is not simply a larger town, but is much more complex in organization. Historically, many cities have been, or still are, equivalent to counties; and the development of the county must be studied before we can understand that of the city. It has been briefly indicated how these forms of local government grew up in England, and how they have become variously modified in adapting themselves to different social conditions in different parts of the United States.

Next in order come the general governments, those which possess and exert, in one way or another, attributes of sovereignty. First, the various colonial governments have been con-

sidered, and some features of their metamorphosis into our modern state governments have been described. In the course of this study, our attention is called to the most original and striking feature of the development of civil government upon American soil, — the written constitution, with the accompanying power of the courts in certain cases to annul the acts of the legislature. This is not only the most original feature of our government, but it is in some respects the most important. Without the Supreme Court, it is not likely that the Federal Union could have been held together, since Congress has now and then passed an act which the people in some of the states have regarded as unconstitutional and tyrannical; and in the absence of a judicial method of settling such questions, the only available remedy would have been nullification. I have devoted a brief chapter to the origin and development of written constitutions, and the connection of our colonial charters therewith.

Lastly, we come to the completed structure, the Federal Union; and by this time we have examined so many points in the general theory of American government, that our Federal Constitution can be more concisely described, and (I believe) more quickly understood, than if we

had made it the subject of the first chapter instead of the last. In conclusion, there have been added a few brief hints and suggestions with reference to our political history. These remarks have been intentionally limited. It is no part of the purpose of this book to give an account of the doings of political parties under the Constitution. But its study may fitly be supplemented by that of Professor Alexander Johnston's "History of American Politics."

This arrangement not only proceeds from the simpler forms of government to the more complex, but it follows the historical order of development. From time immemorial, and down into the lowest strata of savagery that have come within our ken, there have been clans and tribes; and, as is here shown, a township was originally a stationary clan, and a county was originally a stationary tribe. There were townships and counties (or equivalent forms of organization) before there were cities. In like manner there were townships, counties, and cities long before there was anything in the world that could properly be called a state. I have remarked below upon the way in which English shires coalesced into little states, and in course of time the English nation was formed by the union of such little states, which lost

their statehood (*i. e.*, their functions of sovereignty, though not their self-government within certain limits) in the process. Finally, in America, we see an enormous nationality formed by the federation of states which partially retain their statehood; and some of these states are themselves of national dimensions, as, for example, New York, which is nearly equal in area, quite equal in population, and far superior in wealth, to Shakespeare's England.

In studying the local institutions of our different states, I have been greatly helped by the Johns Hopkins University Studies in History and Politics, of which the eighth annual series is now in course of publication. In the course of the pages below I have frequent occasion to acknowledge my indebtedness to these learned and sometimes profoundly suggestive monographs; but I cannot leave the subject without a special word of gratitude to my friend, Dr. Herbert Adams, the editor of the series, for the noble work which he is doing in promoting the study of American history.[1]

. . . . . .

The book is designed to be suggestive and stimulating, to leave the reader with scant in-

[1] [A few paragraphs, written for the guidance of teachers in their class-room work, are omitted in the present edition.]

formation on some points, to make him (as Mr. Samuel Weller says) "vish there wos more," and to show him how to go on by himself. I am well aware that, in making an experiment in this somewhat new direction, nothing is easier than to fall into errors of judgment. I can hardly suppose that this book is free from such errors; but if in spite thereof it shall turn out to be in any way helpful in bringing the knowledge and use of the German seminary method into our higher schools, I shall be more than satisfied.

Just here, let me say to young people in all parts of our country: If you have not already done so, it would be well worth while for you to organize a debating society in your town or village, for the discussion of such historical and practical questions relating to the government of the United States as are suggested in the course of this book. Once started, there need be no end of interesting and profitable subjects for discussion. As a further guide to the books you need in studying such subjects, use Mr. W. E. Foster's "References to the Constitution of the United States." If you cannot afford to buy the books, get the public library of your town or village to buy them; or, perhaps, organize a small special library for your society

or club. Librarians will naturally feel interested in such a matter, and will often be able to help with advice. A few hours every week spent in such wholesome studies cannot fail to do much toward the political education of the local community, and thus toward the general improvement of the American people. For the amelioration of things will doubtless continue to be effected in the future, as it has been effected in the past, not by ambitious schemes of sudden and universal reform (which the sagacious man always suspects, just as he suspects all schemes for returning a fabulously large interest upon investments), but by the gradual and cumulative efforts of innumerable individuals, each doing something to help or instruct those to whom his influence extends. He who makes two clear ideas grow where there was only one hazy one before, is the true benefactor of his species.

In conclusion, I must express my sincere thanks to Mr. Thomas Emerson, superintendent of schools in Newton, for the very kind interest he has shown in my work, in discussing its plan with me at the outset, in reading the completed manuscript, and in offering valuable criticisms.

CAMBRIDGE, *August* 5, 1890.

NOTE

The text of this book was carefully revised by Mr. Fiske for successive editions, the last revision being dated April 16, 1901.

4 Park Street, Boston.

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CIVIL GOVERNMENT IN THE UNITED STATES

I

TAXATION AND GOVERNMENT

IN that strangely beautiful story, "The Cloister and the Hearth," in which Charles Reade has drawn such a vivid picture of human life at the close of the Middle Ages, there is a good description of the siege of a revolted town by the army of the Duke of Burgundy. Arrows whiz, catapults hurl their ponderous stones, wooden towers are built, secret mines are exploded. The sturdy citizens, led by a tall knight who seems to bear a charmed life, baffle every device of the besiegers. At length the citizens capture the brother of the duke's general, and the besiegers capture the tall knight, who turns out to be no knight after all, but just a plebeian hosier. The duke's general is on the point of ordering the tradesman who has made so much trouble to be shot, but the latter still remains master of the situation; for, as he dryly observes, if any harm comes to

him, the enraged citizens will hang the general's brother. Some parley ensues, in which the shrewd hosier promises for the townsfolk to set free their prisoner and pay a round sum of money if the besieging army will depart and leave them in peace. The offer is accepted, and so the matter is amicably settled. As the worthy citizen is about to take his leave, the general ventures a word of inquiry as to the cause of the town's revolt. "What, then, is your grievance, my good friend?" Our hosier knight, though deft with needle and keen with lance, has a stammering tongue. He answers: "Tuta — tuta — tuta — tuta — too much taxes!"

"Too much taxes"

"Too much taxes:" those three little words furnish us with a clue wherewith to understand and explain a great deal of history. A great many sieges of towns, so horrid to have endured though so picturesque to read about, hundreds of weary marches and deadly battles, thousands of romantic plots that have led their inventors to the scaffold, have owed their origin to questions of taxation. The issue between the ducal commander and the warlike tradesman has been tried over and over again in every country and in every age, and not always has the oppressor been so speedily thwarted and got rid of. The questions as to how much the taxes shall be, and who is to decide how much they

shall be, are always and in every stage of society questions of most fundamental importance. And ever since men began to make history, a very large part of what they have done, in the way of making history, has been the attempt to settle these questions, whether by discussion or by blows, whether in council chambers or on the battlefield. The French Revolution of 1789, the most terrible political convulsion of modern times, was caused chiefly by "too much taxes," and by the fact that the people who paid the taxes were not the people who decided what the taxes were to be. Our own Revolution, which made the United States a nation independent of Great Britain, was brought on by the disputed question as to who was to decide what taxes American citizens must pay.

What, then, are taxes? The question is one which is apt to come up, sooner or later, to puzzle children. They find no difficulty in understanding the butcher's bill for so many pounds of meat, or the tailor's bill for so many suits of clothes, where the value received is something that can be seen and handled. But the tax bill, though it comes as inevitably as the autumnal frosts, bears no such obvious relation to the incidents of domestic life; it is not quite so clear what the money goes for; and hence it is apt to be paid by the head of the household with more or less

What is taxation?

grumbling, while for the younger members of the family it requires some explanation.

It only needs to be pointed out, however, that in every town, some things are done for the benefit of all the inhabitants of the town, things which concern one person just as much as another. Thus roads are made and kept in repair, school-houses are built and salaries paid to school-teachers, there are constables who take criminals to jail, there are engines for putting out fires, there are public libraries, town cemeteries, and poor-houses. Money raised for these purposes, which are supposed to concern all the inhabitants, is supposed to be paid by all the inhabitants, each one furnishing his share; and the share which each one pays is his town tax.

From this illustration it would appear that taxes are private property taken for public purposes; and in making this statement we come very near the truth. Taxes are portions of private property which a government takes for its public purposes. Before going farther, let us pause to observe that there is one other way, besides taxation, in which government sometimes takes private property for public purposes. Roads and streets are of great importance to the general public; and the government of the town or city in which you live may see fit, in opening a new

Taxation and eminent domain

street, to run it across your garden, or to make you move your house or shop out of the way for it. In so doing, the government either takes away or damages some of your property. It exercises rights over your property without asking your permission. This power of government over private property is called "the right of eminent domain." It means that a man's private interests must not be allowed to obstruct the interests of the whole community in which he lives. But in two ways the exercise of eminent domain is unlike taxation. In the first place, it is only occasional, and affects only certain persons here or there, whereas taxation goes on perpetually and affects all persons who own property. In the second place, when the government takes away a piece of your land to make a road, it pays you money in return for it; perhaps not quite so much as you believe the piece of land was worth in the market; the average human nature is doubtless such that men seldom give fair measure for measure unless they feel compelled to, and it is not easy to put a government under compulsion. Still it gives you something; it does not ask you to part with your property for nothing. Now in the case of taxation, the government takes your money and seems to make no return to you individually; but it is supposed to return to you the value of it in the shape of well-paved

streets, good schools, efficient protection against criminals, and so forth.

In giving this brief preliminary definition of taxes and taxation, we have already begun to speak of "the government" of the town or city in which you live. We shall presently have to speak of other "governments," — as the government of your state and the government of the United States; and we shall now and then have occasion to allude to the governments of other countries in which the people are free, as, for example, England; and of some countries in which the people are not free, as, for example, Russia. It is desirable, therefore, that we should here at the start make sure what we mean by "government," in order that we may have a clear idea of what we are talking about.

What is government?

Our verb "to govern" is an Old French word, one of the great host of French words which became a part of the English language between the eleventh and fourteenth centuries, when so much French was spoken in England. The French word was *gouverner*, and its oldest form was the Latin *gubernare*, a word which the Romans borrowed from the Greek, and meant originally "to steer the ship." Hence it very naturally came to mean "to guide," "to direct," "to command." The comparison between governing and steering was a happy one.

To govern is not to command as a master commands a slave, but it is to issue orders and give directions for the common good ; for the interests of the man at the helm are the same as those of the people in the ship. All must float or sink together. Hence we sometimes speak of the "ship of state," and we often call the state a "commonwealth," or something in the weal or welfare of which all the people are alike interested.

The "ship of state"

Government, then, is the directing or managing of such affairs as concern all the people alike, — as, for example, the punishment of criminals, the enforcement of contracts, the defence against foreign enemies, the maintenance of roads and bridges, and so on. To the directing or managing of such affairs all the people are expected to contribute, each according to his ability, in the shape of taxes. Government is something which is supported by the people and kept alive by taxation. There is no other way of keeping it alive.

The business of carrying on government — of steering the ship of state — either requires some special training, or absorbs all the time and attention of those who carry it on ; and accordingly, in all countries, certain persons or groups of persons are selected or in some way set apart, for longer or shorter periods of time, to perform the work of government. Such per-

sons may be a king with his council, as in the England of the twelfth century; or a parliament led by a responsible ministry, as in the England of to-day; or a president and two houses of congress, as in the United States; or a board of selectmen, as in a New England town. When we speak of "a government" or "the government," we often mean the group of persons thus set apart for carrying on the work of government. Thus, by "the Gladstone government" we mean Mr. Gladstone, with his colleagues in the cabinet and his Liberal majority in the House of Commons; and by "the Lincoln government," properly speaking, was meant President Lincoln, with the Republican majorities in the Senate and House of Representatives.

"The government" has always many things to do, and there are many different lights in which we might regard it. But for the present there is one thing which we need especially to keep in mind. "The government" is the power which can rightfully take away a part of your property, in the shape of taxes, to be used for public purposes. A government is not worthy of the name, and cannot long be kept in existence, unless it can raise money by taxation, and use force, if necessary, in collecting its taxes. The only general government of the

"The government"

Whatever else it may be, "the government" is the power which taxes

United States during the Revolutionary War, and for six years after its close, was the Continental Congress, which had no authority to raise money by taxation. In order to feed and clothe the army and pay its officers and soldiers, it was obliged to *ask* for money from the several states, and hardly ever got as much as was needed. It was obliged to borrow millions of dollars from France and Holland, and to issue promissory notes which soon became worthless. After the war was over it became clear that this so-called government could neither preserve order nor pay its debts, and accordingly it ceased to be respected either at home or abroad, and it became necessary for the American people to adopt a new form of government. Between the old Continental Congress and the government under which we have lived since 1789, the differences were many; but by far the most essential difference was that the new government could raise money by taxation, and was thus enabled properly to carry on the work of governing.

If we are in any doubt as to what is really the government of some particular country, we cannot do better than observe what person or persons in that country are clothed with authority to tax the people. Mere names, as customarily applied to governments, are apt to be deceptive. Thus in the middle of the eighteenth century

France and England were both called "kingdoms;" but so far as kingly power was concerned, Louis XV. was a very different sort of a king from George II. The French king could impose taxes on his people, and it might therefore be truly said that the government of France was in the king. Indeed, it was Louis XV.'s immediate predecessor who made the famous remark, "The state is myself." But the English king could not impose taxes; the only power in England that could do that was the House of Commons, and accordingly it is correct to say that in England, at the time of which we are speaking, the government was (as it still is) in the House of Commons.

I say, then, the most essential feature of a government — or at any rate the feature with which it is most important for us to become familiar at the start — is its power of taxation. The government is that which taxes. If individuals take away some of your property for purposes of their own, it is robbery; you lose your money and get nothing in return. But if the government takes away some of your property in the shape of taxes, it is supposed to render to you an equivalent in the shape of good government, something without which our lives and property would not be safe. Herein seems to lie the difference between taxation and robbery. When

Difference between taxation and robbery

the highwayman points his pistol at me and I hand him my purse and watch, I am robbed. But when I pay the tax-collector, who can seize my watch or sell my house over my head if I refuse, I am simply paying what is fairly due from me toward supporting the government.

In what we have been saying it has thus far been assumed that the government is in the hands of upright and competent men and is properly administered. It is now time to observe that robbery may be committed by governments as well as by individuals. If the business of governing is placed in the hands of men who have an imperfect sense of their duty toward the public, if such men raise money by taxation and then spend it on their own pleasures, or to increase their political influence, or for other illegitimate purposes, it is really robbery, just as much as if these men were to stand with pistols by the roadside and empty the wallets of people passing by. They make a dishonest use of their high position as members of government, and extort money for which they make no return in the shape of services to the public. History is full of such lamentable instances of misgovernment, and one of the most important uses of the study of history is to teach us how they have occurred, in order that we may learn how to avoid them, as far as possible, in the future.

Sometimes taxation *is* robbery

When we begin in childhood the study of history we are attracted chiefly by anecdotes of heroes and their battles, kings and their courts, how the Spartans fought at Thermopylæ, how Alfred let the cakes burn, how Henry VIII. beheaded his wives, how Louis XIV. used to live at Versailles. It is quite right that we should be interested in such personal details, the more so the better; for history has been made by individual men and women, and until we have understood the character of a great many of those who have gone before us, and how they thought and felt in their time, we have hardly made a fair beginning in the study of history. The greatest historians, such as Freeman and Mommsen, show as lively an interest in persons as in principles; and I would not give much for the historical theories of a man who should declare himself indifferent to little personal details.

The study of history

Some people, however, never outgrow the child's notion of history as merely a mass of pretty anecdotes or stupid annals, without any practical bearing upon our own every-day life. There could not be a greater mistake. Very little has happened in the past which has not some immediate practical lessons for us; and when we study history in order to profit by the experience of our ancestors, to find out wherein they succeeded

It is full of practical lessons;

and wherein they failed, in order that we may emulate their success and avoid their errors, then history becomes the noblest and most valuable of studies. It then becomes, moreover, an arduous pursuit, at once oppressive and fascinating from its endless wealth of material, and abounding in problems which the most diligent student can never hope completely to solve.

Few people have the leisure to undertake a systematic and thorough study of history, but every one ought to find time to learn the principal features of the governments under which we live, and to get some inkling of the way in which these governments have come into existence and of the causes which have made them what they are. Some such knowledge is necessary for the proper discharge of the duties of citizenship. Political questions, great and small, are perpetually arising, to be discussed in the newspapers and voted on at the polls; and it is the duty of every man and woman, young or old, to try to understand them. That is a duty which we owe, each and all of us, to ourselves and to our fellow-countrymen. For if such questions are not settled in accordance with knowledge, they will be settled in accordance with ignorance; and that is a kind of settlement likely to be fraught with results disastrous to everybody. It cannot be too often repeated that eternal vigilance is the price of

and helpful to those who would be good citizens

liberty. People sometimes argue as if they supposed that because our national government is called a republic and not a monarchy, and because we have free schools and universal suffrage, therefore our liberties are forever secure. Our government is, indeed, in most respects, a marvel of political skill; and in ordinary times it runs so smoothly that now and then, absorbed as most of us are in domestic cares, we are apt to forget that it will not run of itself. To insure that the government of the nation or the state, of the city or the township, shall be properly administered, requires from every citizen the utmost watchfulness and intelligence of which he is capable.

Eternal vigilance is the price of liberty

II

THE TOWNSHIP

§ 1. *The New England Township.*

OF the various kinds of government to be found in the United States, we may begin by considering that of the New England township. As we shall presently see, it is in principle of all known forms of government the oldest as well as the simplest. Let us observe how the New England township grew up.

When people from England first came to dwell in the wilderness of Massachusetts Bay, they settled in groups upon small irregular-shaped patches of land, which soon came to be known as townships. There were several reasons why they settled thus in small groups, instead of scattering about over the country and carving out broad estates for themselves. In the first place, their principal reason for coming to New England was their dissatisfaction with the way in which church affairs were managed in the old country. They wished to bring about a reform in the church, in such wise that the

New England was settled by church congregations

members of a congregation should have more voice than formerly in the church government, and that the minister of each congregation should be more independent than formerly of the bishop and of the civil government. They also wished to abolish sundry rites and customs of the church of which they had come to disapprove. Finding the resistance to their reforms quite formidable in England, and having some reason to fear that they might be themselves crushed in the struggle, they crossed the ocean in order to carry out their ideas in a new and remote country where they might be comparatively secure from interference. Hence it was quite natural that they should come in congregations, led by their favourite ministers, — such men, for example, as Higginson and Cotton, Hooker and Davenport. When such men, famous in England for their bold preaching and imperilled thereby, decided to move to America, a considerable number of their parishioners would decide to accompany them, and similarly minded members of neighbouring churches would leave their own pastor and join in the migration. Such a group of people, arriving on the coast of Massachusetts, would naturally select some convenient locality, where they might build their houses near together and all go to the same church.

This migration, therefore, was a movement,

not of individuals or of separate families, but of church congregations, and it continued to be so as the settlers made their way inland and westward. The first river towns of Connecticut were founded by congregations coming from Dorchester, Cambridge, and Watertown. This kind of settlement was favoured by the government of Massachusetts, which made grants of land, not to individuals but to companies of people who wished to live together and attend the same church.

Land grants

In the second place, the soil of New England was not favourable to the cultivation of great quantities of staple articles, such as rice or tobacco, so that there was nothing to tempt people to undertake extensive plantations. Most of the people lived on small farms, each family raising but little more than enough food for its own support; and the small size of the farms made it possible to have a good many in a compact neighbourhood. It appeared also that towns could be more easily defended against the Indians than scattered plantations; and this doubtless helped to keep people together, although if there had been any strong inducement for solitary pioneers to plunge into the great woods, as in later years so often happened at the West, it is not likely that any dread of the savages would have hindered them.

Small farms

Thus the early settlers of New England came to live in townships. A township would consist of about as many farms as could be disposed within convenient distance from the meeting-house, where all the inhabitants, young and old, gathered every Sunday, coming on horseback or afoot. The meeting-house was thus centrally situated, and near it was the town pasture or "common," with the school-house and the blockhouse, or rude fortress for defence against the Indians. For the latter building some commanding position was apt to be selected, and hence we so often find the old village streets of New England running along elevated ridges or climbing over beetling hill-tops. Around the meeting-house and common the dwellings gradually clustered into a village, and after a while the tavern, store, and town-house made their appearance.

Township and village

Among the people who thus tilled the farms and built up the villages of New England, the differences in what we should call social position, though noticeable, were not extreme. While in England some had been esquires or country magistrates, or "lords of the manor," — a phrase which does not mean a member of the peerage, but a landed proprietor with dependent tenants;[1] some had been yeomen, or persons holding farms by some free kind of tenure;

[1] Compare the Scottish "laird."

some had been artisans or tradesmen in cities. All had for many generations been more or less accustomed to self-government and to public meetings for discussing local affairs. That self-government, especially as far as church matters were concerned, they were stoutly bent upon maintaining and extending. Indeed, that was what they had crossed the ocean for. Under these circumstances they developed a kind of government which we may describe in the present tense, for its methods are pretty much the same to-day that they were two centuries ago.

Social position of settlers

In a New England township the people directly govern themselves; the government is the people, or, to speak with entire precision, it is all the male inhabitants of one and twenty years of age and upwards. The people tax themselves. Once each year, usually in March, but sometimes as early as February or as late as April, a "town-meeting" is held, at which all the grown men of the township are expected to be present and to vote, while any one may introduce motions or take part in the discussion. In early times there was a fine for non-attendance, but that is no longer the case; it is supposed that a due regard to his own interests will induce every man to come.

The town-meeting

The town-meeting is held in the town-house, but at first it used to be held in the church,

which was thus a "meeting-house" for civil as well as ecclesiastical purposes. At the town-meeting measures relating to the administration of town affairs are discussed and adopted or rejected; appropriations are made for the public expenses of the town, or in other words the amount of the town taxes for the year is determined; and town officers are elected for the year. Let us first enumerate these officers.

The principal executive magistrates of the town are the selectmen. They are three, five, seven, or nine in number, according to the size of the town and the amount of public business to be transacted. The odd number insures a majority decision in case of any difference of opinion among them. They have the general management of the public business. They issue warrants for the holding of town-meetings, and they can call such a meeting at any time during the year when there seems to be need for it, but the warrant must always specify the subjects which are to be discussed and acted on at the meeting. The selectmen also lay out highways, grant licenses, and impanel jurors; they may act as health officers and issue orders regarding sewerage, the abatement of nuisances, or the isolation of contagious diseases; in many cases they act as assessors of taxes, and as overseers of the poor. They are the proper persons to listen to complaints if

Selectmen

anything goes wrong in the town. In county matters and state matters they speak for the town, and if it is a party to a lawsuit they represent it in court; for the New England town is a legal corporation, and as such can hold property, and sue and be sued. In a certain sense the selectmen may be said to be "the government" of the town during the intervals between the town-meetings.

An officer no less important than the selectmen is the town-clerk. He keeps the record of all votes passed in the town-meetings. He also records the names of candidates and the number of votes for each in the election of state and county officers. He records the births, marriages, and deaths in the township, and issues certificates to persons who declare an intention of marriage. He likewise keeps on record accurate descriptions of the position and bounds of public roads; and, in short, has general charge of all matters of town-record.

Town-clerk

Every town has also its treasurer, who receives and takes care of the money coming in from the taxpayers, or whatever money belongs to the town. Out of this money he pays the public expenses. He must keep a strict account of his receipts and payments, and make a report of them each year.

Town-treasurer

Every town has one or more constables, who serve warrants from the selectmen and writs from

the law courts. They pursue criminals and take them to jail. They summon jurors. In many towns they serve as collectors of taxes, but in many other towns a special officer is chosen for that purpose. When a person fails to pay his taxes, after a specified time the collector has authority to seize upon his property and sell it at auction, paying the tax and costs out of the proceeds of the sale, and handing over the balance to the owner. In some cases, where no property can be found and there is reason to believe that the delinquent is not acting in good faith, he can be arrested and kept in prison until the tax and costs are paid, or until he is released by the proper legal methods.

Constables

Where the duties of the selectmen are likely to be too numerous, the town may choose three or more assessors of taxes to prepare the tax lists; and three or more overseers of the poor, to regulate the management of the village almshouse and confer with other towns upon such questions as often arise concerning the settlement and maintenance of homeless paupers.

Assessors of taxes and overseers of the poor

Every town has its school committee. In 1647 the legislature of Massachusetts enacted a law with the following preamble: "It being one chief project of that old deluder, Satan, to keep men from the knowledge

Public schools

of the Scriptures, as in former times by keeping them in an unknown tongue, so in these latter times by persuading from the use of tongues, that so at least the true sense and meaning of the original might be clouded and corrupted with false glosses of deceivers; to the end that learning may not be buried in the graves of our forefathers, in church and commonwealth, the Lord assisting our endeavours;" it was therefore ordered that every township containing fifty families or householders should forthwith set up a school in which children might be taught to read and write, and that every township containing one hundred families or householders should set up a school in which boys might be fitted for entering Harvard College. Even before this statute, several towns, as for instance Roxbury and Dedham, had begun to appropriate money for free schools; and these were the beginnings of a system of public education which has come to be adopted throughout the United States.

School committees

The school committee exercises powers of such a character as to make it a body of great importance. The term of service of the members is three years, one third being chosen annually. The number of members must therefore be some multiple of three. The slow change in the membership of the board insures that a large proportion of the members

shall always be familiar with the duties of the place. The school committee must visit all the public schools at least once a month, and make a report to the town every year. It is for them to decide what text-books are to be used. They examine candidates for the position of teacher and issue certificates to those whom they select. The certificate is issued in duplicate, and one copy is handed to the selectmen as a warrant that the teacher is entitled to receive a salary. Teachers are appointed for a term of one year, but where their work is satisfactory the appointments are usually renewed year after year. A recent act in Massachusetts *permits* the appointment of teachers to serve during good behaviour, but few boards have as yet availed themselves of this law. If the amount of work to be done seems to require it, the committee appoints a superintendent of schools. He is a sort of lieutenant of the school committee, and under its general direction carries on the detailed work of supervision.

Other town officers are the surveyors of highways, who are responsible for keeping the roads and bridges in repair; field-drivers and pound-keepers; fence-viewers; surveyors of lumber, measurers of wood, and sealers of weights and measures.

The field-driver takes stray animals to the pound, and then notifies their owner; or if he

does not know who is the owner he posts a description of the animals in some such place as the village store or tavern, or has it published in the nearest country newspaper. Meanwhile the strays are duly fed by the pound-keeper, who does not let them out of his custody until all expenses have been paid.

Field-drivers and pound-keepers

If the owners of contiguous farms, gardens, or fields get into a dispute about their partition fences or walls, they may apply to one of the fence-viewers, of whom each town has at least two. The fence-viewer decides the matter, and charges a small fee for his services. Where it is necessary he may order suitable walls or fences to be built.

Fence-viewers

The surveyors of lumber measure and mark lumber offered for sale. The measurers of wood do the same for firewood. The sealers test the correctness of weights and measures used in trade, and tradesmen are not allowed to use weights and measures that have not been thus officially examined and sealed. Measurers and sealers may be appointed by the selectmen.

Other officers

Such are the officers always to be found in the Massachusetts town, except where the duties of some of them are discharged by the selectmen. Of these officers, the selectmen, town-clerk, treasurer, constable, school com-

mittee, and assessors must be elected by ballot at the annual town-meeting.

When this meeting is to be called the selectmen issue a warrant for the purpose, specifying the time and place of meeting and the nature of the business to be transacted. The constable posts copies of the warrant in divers conspicuous places not less than a week before the time appointed. Then, after making a note upon the warrant that he has duly served it, he hands it over to the town-clerk. On the appointed day, when the people have assembled, the town-clerk calls the meeting to order and reads the warrant. The meeting then proceeds to choose by ballot its presiding officer, or "moderator," and business goes on in accordance with parliamentary customs pretty generally recognized among all people who speak English.

Calling the town-meeting

At this meeting the amount of money to be raised by taxation for town purposes is determined. But, as we shall see, every inhabitant of a town lives not only under a town government, but also under a county government and a state government, and all these governments have to be supported by taxation. In Massachusetts the state and the county make use of the machinery of the town government in order to assess and collect their taxes. The total amounts to be

Town, county, and state taxes

raised are equitably divided among the several towns and cities, so that each town pays its proportionate share. Each year, therefore, the town assessors know that a certain amount of money must be raised from the taxpayers of their town, — partly for the town, partly for the county, partly for the state, — and for the general convenience they usually assess it upon the taxpayers all at once. The amounts raised for the state and county are usually very much smaller than the amount raised for the town. As these amounts are all raised in the town and by town officers, we shall find it convenient to sum up in this place what we have to say about the way in which taxes are raised. Bear in mind that we are still considering the New England system, and our illustration is taken from the practice in Massachusetts. But the general principles of taxation are so similar in the different states that, although we may now and then have to point to differences of detail, we shall not need to go over the whole subject again. We have now to observe how and upon whom the taxes are assessed.

They are assessed partly upon persons, but chiefly upon property, and property is divisible into real estate and personal estate. Poll-tax The tax assessed upon persons is called the poll-tax, and cannot exceed the sum of two dollars upon every male citizen over

twenty years old. In cases of extreme poverty the assessors may remit the poll-tax.

Real-estate taxes

As to real estate, there are in every town some lands and buildings which, for reasons of public policy, are exempted from paying taxes; as, for example, churches, graveyards, and tombs; many charitable institutions, including universities and colleges; and public buildings which belong to the state or to the United States. All lands and buildings, except such as are exempt by law, must pay taxes.

Taxes on personal property

Personal property includes pretty much everything that one can own except lands and buildings, — pretty much everything that can be moved or carried about from one place to another. It thus includes ready money, stocks and bonds, ships and wagons, furniture, pictures, and books. It also includes the amount of debts due to a person in excess of the amount that he owes; also the income from his employment, whether in the shape of profits from business or a fixed salary.

Some personal property is exempted from taxation; as, for example, household furniture to the amount of $1000 in value, and income from employment to the extent of $2000. The obvious intent of this exemption is to prevent taxation from bearing too hard upon persons

of small means; and for a similar reason the tools of farmers and mechanics are exempted.[1]

The date at which property is annually reckoned for assessment is in Massachusetts the first day of May. The poll-tax is assessed upon each person in the town or city where he has his legal habitation on that day; and as a general rule the taxes upon his personal property are assessed to him in the same place. But taxes upon lands or buildings are assessed in the city or town where they are situated, and to the person, wherever he lives, who is the owner of them on the first day of May. Thus a man who lives in the Berkshire mountains, say for example in the town of Lanesborough, will pay his poll-tax to that town. For his personal property, whether it be bonds of a railroad in Colorado, or shares in a bank in New York, or costly pictures in his house at Lanesborough, he will likewise pay taxes to Lanesborough. So for the house in which he lives, and the land upon which it stands, he pays taxes to that same town. But if he owns at the same time a house in Boston, he pays taxes for it to Boston, and if he owns a block of shops in Chicago he pays taxes for the same to Chicago. It is very apt to be the case that the rate of taxation is higher in large cities

When and where taxes are assessed

[1] United States bonds are also especially exempted from taxation.

than in villages; and accordingly it often happens that wealthy inhabitants of cities, who own houses in some country town, move into them before the first of May, and otherwise comport themselves as legal residents of the country town, in order that their personal property may be assessed there rather than in the city.

About the first of May the assessors call upon the inhabitants of their town to render a true statement as to their property. The most approved form is for the assessors to send by mail to each taxable inhabitant a printed list of questions, with blank spaces which he is to fill with written answers. The questions relate to every kind of property, and when the person addressed returns the list to the assessors he must make oath that to the best of his knowledge and belief his answers are true. He thus becomes liable to the penalties for perjury if he can be proved to have sworn falsely. A reasonable time — usually six or eight weeks — is allowed for the list to be returned to the assessors. If any one fails to return his list by the specified time, the assessors must make their own estimate of the probable amount of his property. If their estimate is too high, he may petition the assessors to have the error corrected, but in many cases it may prove troublesome to effect this.

Tax lists

Observe here an important difference between

the imposition of taxes upon real estate and upon personal property. Houses and lands cannot run away or be tucked out of sight. Their value, too, is something of which the assessors can very likely judge as well as the owner. Deception is therefore extremely difficult, and taxation for real estate is pretty fairly distributed among the different owners. With regard to personal estate it is very different. It is comparatively easy to conceal one's ownership of some kinds of personal property, or to understate one's income. Hence the temptation to lessen the burden of the tax bill by making false statements is considerable, and doubtless a good deal of deception is practised. There are many people who are too honest to cheat individuals, but still consider it a venial sin to cheat the government.

Cheating the government

After the assessors have obtained all their returns they can calculate the total value of the taxable property in the town; and knowing the amount of the tax to be raised, it is easy to calculate the rate at which the tax is to be assessed. In most parts of the United States a rate of one and a half per cent., or $15 tax on each $1000 worth of property, would be regarded as moderate; three per cent. would be regarded as excessively high. At the lower of these rates a man worth $50,000 would pay $750 for his yearly taxes. The annual income of

The rate of taxation

$50,000, invested on good security, is hardly more than $2500. Obviously $750 is a large sum to subtract from such an income.

In point of fact, however, the tax is seldom quite as heavy as this. It is not easy to tell exactly how much a man is worth, and accordingly assessors, not wishing to be too disagreeable in the discharge of their duties, have naturally fallen into a way of giving the lower valuation the benefit of the doubt, until in many places a custom has grown up of regularly undervaluing property for purposes of taxation. Very much as liquid measures have gradually shrunk until it takes five quart bottles to hold a gallon, so there has been a shrinkage of valuations until it has become common to tax a man for only three fourths or perhaps two thirds of what his property is worth in the market. This makes the rate higher, to be sure, but the individual taxpayer nevertheless seems to feel relieved by it. Allowing for this undervaluation, we may say that a man worth $50,000 commonly pays not less than $500 for his yearly taxes, or about one fifth of the annual income of the property. We thus begin to see what a heavy burden taxes are, and how essential to good government it is that citizens should know what their money goes for, and should be able to exert some effective control over the public expenditures. Where the

Under-valuation

The burden of taxation

rate of taxation in a town rises to a very high point, such as two and a half or three per cent., the prosperity of the town is apt to be seriously crippled. Traders and manufacturers move away to other towns, or those who would otherwise come to the town in question stay away, because they cannot afford to use up all their profits in paying taxes. If such a state of things is long kept up, the spirit of enterprise is weakened, the place shows signs of untidiness and want of thrift, and neighbouring towns, once perhaps far behind it in growth, by and by shoot ahead of it and take away its business.

Within its proper sphere, government by town-meeting is the form of government most effectively under watch and control. Everything is done in the full daylight of publicity. The specific objects for which public money is to be appropriated are discussed in the presence of everybody, and any one who disapproves of any of these objects, or of the way in which it is proposed to obtain it, has an opportunity to declare his opinions. Under this form of government people are not so liable to bewildering delusions as under other forms. I refer especially to the delusion that "the Government" is a sort of mysterious power, possessed of a magic inexhaustible fund of wealth, and able to do all manner of things for the benefit of "the People." Some such notion

The "magic fund" delusion

as this, more often implied than expressed, is very common, and it is inexpressibly dear to demagogues. It is the prolific root from which springs that luxuriant crop of humbug upon which political tricksters thrive as pigs fatten upon corn. In point of fact no such government, armed with a magic fund of its own, has ever existed upon the earth. No government has ever yet used any money for public purposes which it did not first take from its own people, — unless when it may have plundered it from some other people in victorious warfare.

The inhabitant of a New England town is perpetually reminded that "the Government" is "the People." Although he may think loosely about the government of his state or the still more remote government at Washington, he is kept pretty close to the facts where local affairs are concerned, and in this there is a political training of no small value.

Educational value of the town-meeting

In the kind of discussion which it provokes, in the necessity of facing argument with argument and of keeping one's temper under control, the town-meeting is the best political training school in existence. Its educational value is far higher than that of the newspaper, which, in spite of its many merits as a diffuser of information, is very apt to do its best to bemuddle and sophisticate plain facts. The period when town-meet-

ings were most important from the wide scope of their transactions was the period of earnest and sometimes stormy discussion that ushered in our Revolutionary war. Country towns were then of more importance relatively than now; one country town — Boston — was at the same time a great political centre; and its meetings were presided over and addressed by men of commanding ability, among whom Samuel Adams, "the man of the town-meeting,"[1] was foremost. In those days great principles of government were discussed with a wealth of knowledge and stated with masterly skill in town-meeting.

The town-meeting is to a very limited extent a legislative body; it can make sundry regulations for the management of its local affairs. Such regulations are known by a very ancient name, "by-laws." *By* is an Old Norse word meaning "town," and it appears in the names of such towns as *Derby* and *Whitby* in the part of England overrun by the Danes in the ninth and tenth centuries. By-laws are town laws.[2]

By-laws

In the selectmen and various special officers

[1] The phrase is Professor Hosmer's: see his *Samuel Adams, the Man of the Town Meeting*, in Johns Hopkins Univ. Studies, vol. ii. no. iv.; also his *Samuel Adams*, in American Statesmen Series, Boston, 1885.

[2] In modern usage the rules and regulations of clubs, learned societies, and other associations, are also called by-laws.

the town has an executive department; and here let us observe that, while these officials are kept strictly accountable to the people, they are intrusted with very considerable authority.

Power and responsibility

Things are not so arranged that an officer can plead that he has failed in his duty from lack of power. There is ample power, joined with complete responsibility. This is especially to be noticed in the case of the selectmen. They must often be called upon to exercise a wide discretion in what they do, yet this excites no serious popular distrust or jealousy. The annual election affords an easy means of dropping an unsatisfactory officer. But in practice nothing has been more common than for the same persons to be reëlected as selectmen or constables or town-clerks for year after year, as long as they are able or willing to serve. The notion that there is anything peculiarly American or democratic in what is known as "rotation in office" is therefore not sustained by the practice of the New England town, which is the most complete democracy in the world. It is the most perfect exhibition of what President Lincoln called "government of the people by the people and for the people."

§ 2. *Origin of the Township.*

It was said above that government by town-meeting is in principle the oldest form of gov-

ernment known in the world. The student of ancient history is familiar with the *comitia* of the Romans and the *ecclesia* of the Greeks. These were popular assemblies, held in those soft climates in the open air, usually in the market-place, — the Roman *forum*, the Greek *agora*. The government carried on in them was a more or less qualified democracy. In the palmy days of Athens it was a pure democracy. The assemblies which in the Athenian market-place declared war against Syracuse, or condemned Socrates to death, were quite like New England town-meetings, except that they exercised greater powers because there was no state government above them.

Town-meetings in Greece and Rome

The principle of the town-meeting, however, is older than Athens or Rome. Long before streets were built or fields fenced in, men wandered about the earth hunting for food in family parties, somewhat as lions do in South Africa. Such family groups were what we call *clans*, and so far as is known they were the earliest form in which civil society appeared on the earth. Among all wandering or partially settled tribes the clan is to be found, and there are ample opportunities for studying it among our Indians in North America. The clan usually has a chief or head-man, useful mainly as a leader in war-time; its civil

Clans

government, crude and disorderly enough, is in principle a pure democracy.

When our ancestors first became acquainted with American Indians, the most advanced tribes lived partly by hunting and fishing, but partly also by raising Indian corn and pumpkins. They had begun to live in wigwams grouped together in small villages and surrounded by strong rows of palisades for defence. Now what these red men were doing our own fair-haired ancestors in northern and central Europe had been doing some twenty centuries earlier. The Scandinavians and Germans, when first known in history, had made considerable progress in exchanging a wandering for a settled mode of life. When the clan, instead of moving from place to place, fixed upon some spot for a permanent residence, a village grew up there, surrounded by a belt of waste land, or somewhat later by a stockaded wall. The belt of land was called a *mark*, and the wall was called a *tun*.[1] Afterwards the enclosed space came to be known sometimes as the *mark*, sometimes as the *tun* or *town*. In England the latter name prevailed. The inhabitants of a mark or town were a stationary clan. It was customary to call them by the clan name, as for example "the Beorings" or "the Cressings;" then the town would be

The *mark* and the *tun*

[1] Pronounced "toon."

called *Barrington*, "town of the Beorings," or *Cressingham*, "home of the Cressings." Town names of this sort, with which the map of England is thickly studded, point us back to a time when the town was supposed to be the stationary home of a clan.

The Old English township

The Old English town had its *tungemot*, or town-meeting, in which "by-laws" were made and other important business transacted. The principal officers were the "reeve" or head-man, the "beadle" or messenger, and the "tithing-man" or petty constable. These officers seem at first to have been elected by the people, but after a while, as great lordships grew up, usurping jurisdiction over the land, the lord's steward and bailiff came to supersede the reeve and beadle. After the Norman Conquest the townships, thus brought under the sway of great lords, came to be generally known by the French name of *manors* or "dwelling places." Much might be said about this change, but here it is enough for us to bear in mind that a manor was essentially a township in which the chief executive officers were directly responsible to the lord rather than to the people.

The manor

It would be wrong, however, to suppose that the manors entirely lost their self-government. Even the ancient town-meeting survived in them, in a fragmentary way, in several interest-

ing assemblies, of which the most interesting were the *court leet*, for the election of certain officers and the trial of petty offences, and the *court baron*, which was much like a town-meeting.

The parish

Still more of the old self-government would doubtless have survived in the institutions of the manor if it had not been provided for in another way. The *parish* was older than the manor. After the English had been converted to Christianity local churches were gradually set up all over the country, and districts called parishes were assigned for the ministrations of the priests. Now a parish generally coincided in area with a township, or sometimes with a group of two or three townships. In the old heathen times each town seems to have had its sacred place or shrine consecrated to some local deity, and it was a favourite policy with the Roman missionary priests to purify the old shrine and turn it into a church. In this way the township at the same time naturally became the parish.

Township, manor, and parish

As we find it in later times, both before and since the founding of English colonies in North America, the township in England is likely to be both a manor and a parish. For some purposes it is the one, for some purposes it is the other. The townsfolk may be regarded as a group of tenants of

the lord's manor, or as a group of parishioners of the local church. In the latter aspect the parish retained much of the self-government of the ancient town. The business with which the lord was entitled to meddle was strictly limited, and all other business was transacted in the "vestry-meeting," which was practically the old town-meeting under a new name. In the course of the thirteenth century we find that the parish had acquired the right of taxing itself for church purposes. Money needed for the church was supplied in the form of "church-rates" voted by the rate-payers themselves in the vestry-meeting, so called because it was originally held in a room of the church in which vestments were kept.

The vestry-meeting

The officers of the parish were the constable, the parish and vestry clerks,[1] the beadle,[2] the "waywardens" or surveyors of highways, the "haywards" or fence-viewers, the "common drivers," the collectors of taxes, and at the beginning of the seventeenth

Parish officers

[1] Of these two officers the vestry clerk is the counterpart of the New England town-clerk.

[2] Originally a messenger or crier, the beadle came to assume some of the functions of the tithing-man or petty constable, such as keeping order in church, punishing petty offenders, waiting on the clergyman, etc. In New England towns there were formerly officers called tithing-men, who kept order in church, arrested tipplers, loafers, and Sabbath-breakers, etc.

century overseers of the poor were added. There were also churchwardens, usually two for each parish. Their duties were primarily to take care of the church property, assess the rates, and call the vestry-meetings. They also acted as overseers of the poor, and thus in several ways remind one of the selectmen of New England. The parish officers were all elected by the ratepayers assembled in vestry-meeting, except the common driver and hayward, who were elected by the same ratepayers assembled in court leet. Besides electing parish officers and granting the rates, the vestry-meeting could enact by-laws; and all ratepayers had an equal voice in its deliberations.

During the last two centuries the constitution of the English parish has undergone some modifications which need not here concern us. The Puritans who settled in New England had grown up under such parish government as is here described, and they were used to hearing the parish called, on some occasions and for some purposes, a township. If we remember now that the earliest New England towns were founded by church congregations, led by their pastors, we can see how town government in New England originated. It was simply the English parish government brought into a new country and adapted to the new situation. Part of this new situation

The transition from England to New England

consisted in the fact that the lords of the manor were left behind. There was no longer any occasion to distinguish between the township as a manor and the township as a parish; and so, as the three names had all lived on together, side by side, in England, it was now the oldest and most generally descriptive name, "township," that survived, and has come into use throughout a great part of the United States. The townsfolk went on making by-laws, voting supplies of public money, and electing their magistrates in America, after the fashion with which they had for ages been familiar in England. Some of their offices and customs were of hoary antiquity. If age gives respectability, the office of constable may vie with that of king; and if the annual town-meeting is usually held in the month of March, it is because in days of old, long before Magna Charta was thought of, the rules and regulations for the village husbandry were discussed and adopted in time for the spring planting.

To complete our sketch of the origin of the New England town, one point should here be briefly mentioned in anticipation of what will have to be said hereafter; but it is a point of so much importance that we need not mind a little repetition in stating it.

We have seen what a great part taxation plays in the business of government, and we shall pre-

sently have to treat of county, state, and federal governments, all of them wider in their sphere than the town government. In the course of history, as nations have gradually been built up, these wider governments have been apt to absorb or supplant and crush the narrower governments, such as the parish or township; and this process has too often been destructive to political freedom. Such a result is, of course, disastrous to everybody; and if it were unavoidable, it would be better that great national governments need never be formed. But it is not unavoidable. There is one way of escaping it, and that is to give the little government of the town some real share in making up the great government of the state. That is not an easy thing to do, as is shown by the fact that most peoples have failed in the attempt. The people who speak the English language have been the most successful, and the device by which they have overcome the difficulty is REPRESENTATION. The town sends to the wider government a delegation of persons who can *represent* the town and its people. They can speak for the town, and have a voice in the framing of laws and imposition of taxes by the wider government.

Building up states

Representation

In English townships there has been from time immemorial a system of representation. Long before Alfred's time there were "shire-

motes," or what were afterwards called county meetings, and to these each town sent its reeve and "four discreet men" as *representatives*. Thus to a certain extent the wishes of the townsfolk could be brought to bear upon county affairs. By and by this method was applied on a much wider scale. It was applied to the whole kingdom, so that the people of all its towns and parishes succeeded in securing a representation of their interests in an elective national council or House of Commons. This great work was accomplished in the thirteenth century by Simon de Montfort, Earl of Leicester, and was completed by Edward I. Simon's Parliament, the first in which the Commons were fully represented, was assembled in 1265; and the date of Edward's Parliament, which has been called the Model Parliament, was 1295. These dates have as much interest for Americans as for Englishmen, because they mark the first definite establishment of that grand system of representative government which we are still carrying on at our various state capitals and at Washington. For its humble beginnings we have to look back to the "reeve and four" sent by the ancient townships to the county meetings.

Shire-motes

Earl Simon's Parliament

The English township or parish was thus at an early period the "unit of representation" in the government of the county. It was also a

district for the assessment and collection of the national taxes; in each parish the assessment was made by a board of assessors chosen by popular vote. These essential points reappear in the early history of New England. The township was not only a self-governing body, but it was the "unit of representation" in the colonial legislature, or "General Court;" and the assessment of taxes, whether for town purposes or for state purposes, was made by assessors elected by the townsfolk. In its beginnings and fundamentals our political liberty did not originate upon American soil, but was brought hither by our forefathers the first settlers. They brought their political institutions with them as naturally as they brought their language and their social customs.

Township as unit of representation

Observe now that the township is to be regarded in two lights. It must be considered not only in itself, but as part of a greater whole. We began by describing it as a self-governing body, but in order to complete our sketch we were obliged to speak of it as a body which has a share in the government of the state and the nation. The latter aspect is as important as the former. If the people of a town had only the power of managing their local affairs, without the power of taking part in the management of national affairs, their political freedom would be far from complete. In Russia, for example, the

larger part of the vast population is resident in village communities which have to a considerable extent the power of managing their local affairs. Such a village community is called a *mir*, and like the English township it is lineally descended from the stationary clan. The people of the Russian *mir* hold meetings in which they elect sundry local officers, distribute the burden of local taxation, make regulations concerning local husbandry and police, and transact other business which need not here concern us. But they have no share in the national government, and are obliged to obey laws which they have no voice in making, and pay taxes assessed upon them without their consent; and accordingly we say with truth that the Russian people do not possess political freedom. One reason for this has doubtless been that in times past the Russian territory was the great frontier battle-ground between civilized Europe and the wild hordes of western Asia, and the people who lived for ages on that turbulent frontier were subjected to altogether too much conquest. They have tasted too little of civil government and too much of military government, — a pennyworth of wholesome bread to an intolerable deal of sack. The early English, in their snug little corner of the world, belted by salt sea, were able to develop their civil government with less

The Russian village community; not represented in the national government

destructive interference. They made a sound and healthful beginning when they made the township the "unit of representation" for the county. Then the township, besides managing its own affairs, began to take part in the management of wider affairs.

III

THE COUNTY

§ 1. *The County in its Beginnings.*

IT is now time for us to treat of the county, and we may as well begin by considering its origin. In treating of the township we began by sketching it in its fullest development, as seen in New England. With the county we shall find it helpful to pursue a different method and start at the beginning.

If we look at the maps of the states which make up our Union, we see that they are all divided into counties (except that in Louisiana the corresponding divisions are named parishes). The map of England shows that country as similarly divided into counties.

If we ask why this is so, some people will tell us that it is convenient, for purposes of administration, to have a state, or a kingdom, divided into areas that are larger than single towns. There is much truth in this. It is convenient. If it were not so, counties would not have survived, so as to make a part of our modern maps. Nevertheless, this is not the historic reason why we

Why do we have counties?

have the particular kind of subdivisions known as counties. We have them because our fathers and grandfathers had them; and thus, if we would find out the true reason, we may as well go back to the ancient times when our forefathers were establishing themselves in England.

We have seen how the clan of our barbarous ancestors, when it became stationary, was established as the town or township. But in those early times *clans* were generally united more or less closely into *tribes*. Among all primitive or barbarous races of men, so far as we can make out, society is organized in tribes, and each tribe is made up of a number of clans or family groups. Now when our English forefathers conquered Britain they settled there as clans and also as tribes. The clans became townships, and the tribes became shires or counties; that is to say, the names were applied first to the people and afterwards to the land they occupied. A few of the oldest county names in England still show this plainly. *Essex*, *Middlesex*, and *Sussex* were originally "East Saxons," "Middle Saxons," and "South Saxons;" and on the eastern coast two tribes of Angles were distinguished as "North folk" and "South folk," or *Norfolk* and *Suffolk*. When you look on the map and see the town of *Icklingham* in the county of *Suffolk*, it means

Clans and tribes

that this place was once known as the "home" of the "Icklings" or "children of Ickel," a clan which formed part of the tribe of "South folk."

In those days there was no such thing as a Kingdom of England; there were only these groups of tribes living side by side. Each tribe had its leader, whose title was *ealdorman*,[1] or "elder man." After a while, as some tribes increased in size and power, their ealdormen took the title of kings. The little kingdoms coincided sometimes with a single shire, sometimes with two or more shires. Thus there was a kingdom of Kent, and the North and South Folk were combined in a kingdom of East Anglia. In course of time numbers of shires combined into larger kingdoms, such as Northumbria, Mercia, and the West Saxons; and finally the king of the West Saxons became king of all England, and the several *shires* became subordinate parts or "shares" of the kingdom. In England, therefore, the shires are older than the nation. The shires were not made by dividing the nation, but the nation was made by uniting the shires. The English nation, like the American, grew out of the union of little states that had once been independent of one

The English nation, like the American, grew out of the union of small states

[1] The pronunciation was probably something like *yáwldorman*.

another, but had many interests in common. For not less than three hundred years after all England had been united under one king, these shires retained their self-government almost as completely as the several states of the American Union.[1] A few words about their government will not be wasted, for they will help to throw light upon some things that still form a part of our political and social life.

Shire-mote, ealdorman, and sheriff

The shire was governed by the *shire-mote* (*i. e.* "meeting"), which was a representative body. Lords of lands, including abbots and priors, attended it, as well as the reeve and four selected men from each township. There were thus the germs of both the kind of representation that is seen in the House of Lords and the much more perfect kind that is seen in the House of Commons. After a while, as cities and boroughs grew in importance, they sent representative burghers to the shire-mote. There were two presiding officers: one was the *ealdorman*, who was now appointed by the king; the other was the *shire-reeve* (*i. e.* "sheriff"), who was still elected by the people and generally held office for life.

This shire-mote was both a legislative body and a court of justice. It not only made laws for the shire, but it tried civil and criminal

[1] Chalmers, *Local Government*, p. 90.

causes. After the Norman Conquest some changes occurred. The shire now began to be called by the French name "county," because of its analogy to the small pieces of territory on the Continent that were governed by "counts."[1] The shire-mote became known as the county court, but cases coming before it were tried by the king's *justices in eyre*, or circuit judges, who went about from county to county to preside over the judicial work. The office of ealdorman became extinct. The sheriff was no longer elected by the people for life, but appointed by the king for the term of one year. This kept him strictly responsible to the king. It was the sheriff's duty to see that the county's share of the national taxes was duly collected and paid over to the national treasury. The sheriff also summoned juries and enforced the judgments of the courts, and if he met with resistance in so doing he was authorized to call out a force of men, known as the *posse comitatus* (*i. e.* "power of the county"), and overcome all opposition. Another county officer was the *coroner*, or *crowner*,[2] so called because originally (in Alfred's time) he was appointed by the king, and was especially the

The county court

The coroner

[1] Originally *comites*, or "companions" of the king.

[2] This form of the word, sometimes supposed to be a vulgarism, is as correct as the other. See Skeat, *Etym. Dict.*, *s. v.*

crown officer in the county. Since the time of Edward I., however, coroners have been elected by the people. Originally coroners held small courts of inquiry upon cases of wreckage, destructive fires, or sudden death, but in course of time their jurisdiction became confined to the last-named class of cases. If a death occurred under circumstances in any way mysterious or likely to awaken suspicion, it was the business of the coroner, assisted by not less than twelve *jurors* (*i. e.* "sworn men"), to hold an *inquest* for the purpose of ascertaining the cause of death. The coroner could compel the attendance of witnesses and order a medical examination of the body, and if there were sufficient evidence to charge any person with murder or manslaughter, the coroner could have such person arrested and committed for trial.

Another important county officer was the *justice of the peace*. Originally six were appointed by the Crown in each county, but in later times any number might be appointed. The office was created by a series of statutes in the reign of Edward III., in order to put a stop to the brigandage which still flourished in England; it was a common practice for robbers to seize persons and hold them for ransom.[1] By the last of these statutes,

Justices of the peace

[1] Longman's *Life and Times of Edward III.*, vol. i. p. 301.

in 1362, the justices of the peace in each county were to hold a court four times in the year. The powers of this court, which came to be known as the Quarter Sessions, were from time to time increased by act of Parliament, until it quite supplanted the old county court. In modern times the Quarter Sessions has become an administrative body quite as much as a court. The justices, who receive no salary, hold office for life, or during good behaviour. They appoint the chief constable of the county, who appoints the police. They also take part in the supervision of highways and bridges, asylums and prisons. Since the reign of Henry VIII., the English county has had an officer known as the lord-lieutenant, who was once leader of the county militia, but whose functions to-day are those of keeper of the records and principal justice of the peace.

The Quarter Sessions

The lord-lieutenant

During the past five hundred years the English county has gradually sunk from a self-governing community into an administrative district; and in recent times its boundaries have been so crossed and criscrossed with those of other administrative areas, such as those of school-boards, sanitary boards, etc., that very little of the old county is left in recognizable shape. Most of this change has been effected

since the Tudor period. The first English settlers in America were familiar with the county as a district for the administration of justice, and they brought with them coroners, sheriffs, and quarter sessions. In 1635 the General Court of Massachusetts appointed four towns — Boston, Cambridge, Salem, and Ipswich — as places where courts should be held quarterly. In 1643 the colony, which then included as much of New Hampshire as was settled, was divided into four "shires," — Suffolk, Essex, Middlesex, and Norfolk, the latter lying then to the northward and including the New Hampshire towns. The militia was then organized, perhaps without consciousness of the analogy, after a very old English fashion; the militia of each town formed a company, and the companies of the shire formed a regiment. The county was organized from the beginning as a judicial district, with its court-house, jail, and sheriff. After 1697 the court, held by the justices of the peace, was called the Court of General Sessions. It could try criminal causes not involving the penalty of death or banishment, and civil causes in which the value at stake was less than forty shillings. It also had control over highways going from town to town; and it apportioned the county taxes among the several

Beginnings of Massachusetts counties

towns. The justices and sheriff were appointed by the governor, as in England by the king.

§ 2. *The Modern County in Massachusetts.*

The modern county system of Massachusetts may now be very briefly described. The county, like the town, is a corporation; it can hold property and sue or be sued. It builds the court-house and jail, and keeps them in repair. The town in which these buildings are placed is called, as in England, the shire town.

In each county there are three commissioners, elected by the people. Their term of service is three years, and one goes out each year. These commissioners represent the county in lawsuits, as the selectmen represent the town. They "apportion the county taxes among the towns;" "lay out, alter, and discontinue highways within the county;" "have charge of houses of correction;" and erect and keep in repair the county buildings.[1]

County commissioners

The revenues of the county are derived partly from taxation and partly from the payment of fines and costs in the courts. These revenues are received and disbursed by the county treasurer, who is elected by the people for a term of three years.

County treasurer

The Superior Court of the state holds at

[1] Martin's *Civil Government*, p. 197.

least two sessions annually in each county, and tries civil and criminal causes. There is also in each county a probate court with jurisdiction over all matters relating to wills, administration of estates, and appointment of guardians; it also acts as a court of insolvency. The custody of wills and documents relating to the business of this court is in the hands of an officer known as the register of probate, who is elected by the people for a term of five years.

Courts

To preserve the records of all land-titles and transfers of land within the county, all deeds and mortgages are registered in an office in the shire town, usually within or attached to the court-house. The register of deeds is an officer elected by the people for a term of three years. In counties where there is much business there may be more than one.

Shire town and court-house

Justices of the peace are appointed by the governor for a term of seven years, and the appointment may be renewed. Their functions have been greatly curtailed, and now amount to little more than administering oaths, and in some cases issuing warrants and taking bail. They may join persons in marriage, and, when specially commissioned as "trial justices," have criminal jurisdiction over sundry petty offences.

Justices of the peace

The sheriff is elected by the people for a term of three years. He may appoint deputies, for whom he is responsible, to assist him in his work. He must attend all county courts, and the meetings of the county commissioners whenever required. He must inflict, either personally or by deputy, the sentence of the court, whether it be fine, imprisonment, or death. He is responsible for the preservation of the peace within the county, and to this end must pursue criminals and may arrest disorderly persons. If he meets with resistance he may call out the *posse comitatus;* if the resistance grows into insurrection he may apply to the governor and obtain the aid of the state militia; if the insurrection proves too formidable to be thus dealt with, the governor may in his behalf apply to the President of the United States for aid from the regular army. In this way the force that may be drawn upon, if necessary, for the suppression of disorder in a single locality, is practically unlimited and irresistible.

The sheriff

We have now obtained a clear outline view of the township and county in themselves and in their relation to one another, with an occasional glimpse of their relation to the state; in so far, at least, as such a view can be gained from a reference to the history of England and of Massachusetts. We must next trace the de-

velopment of local government in other parts of the United States; and in doing so we can advance at somewhat quicker pace, not because our subject becomes in any wise less important or less interesting, but because we have already marked out the ground and said things of general application which will not need to be said over again.

§ 3. *The Old Virginia County.*

By common consent of historians, the two most distinctive and most characteristic lines of development which English forms of government have followed, in propagating themselves throughout the United States, are the two lines that have led through New England on the one hand and through Virginia on the other. We have seen what shape local government assumed in New England; let us now observe what shape it assumed in the Old Dominion.

The first point to be noticed in the early settlement of Virginia is that people did not live so near together as in New England. This was because tobacco, cultivated on large estates, was a source of wealth. Tobacco drew settlers to Virginia as in later days gold drew settlers to California and Australia. They came not in organized groups or congregations, but as a multitude of individ-

Virginia sparsely settled

uals. Land was granted to individuals, and sometimes these grants were of enormous extent. "John Bolling, who died in 1757, left an estate of 40,000 acres, and this is not mentioned as an extraordinary amount of land for one man to own."[1] From an early period it was customary to keep these great estates together by entailing them, and this continued until entails were abolished in 1776 through the influence of Thomas Jefferson.

A glance at the map of Virginia shows to what a remarkable degree it is intersected by navigable rivers. This fact made it possible for plantations, even at a long distance from the coast, to have each its own private wharf, where a ship from England could unload its cargo of tools, cloth, or furniture, and receive a cargo of tobacco in return. As the planters were thus supplied with most of the necessaries of life, there was no occasion for the kind of trade that builds up towns. Even in comparatively recent times the development of town life in Virginia has been very slow. In 1880, out of 246 cities and towns in the United States with a population exceeding 10,000, there were only six in Virginia.

Absence of towns

The cultivation of tobacco upon large estates caused a great demand for cheap labour, and

[1] Edward Channing, *Town and County Government*, in Johns Hopkins University Studies, vol. ii. p. 467.

this was supplied partly by bringing negro slaves from Africa, partly by bringing criminals from English jails. The latter were sold into slavery for a limited term of years, and were known as "indentured white servants." So great was the demand for labour that it became customary to kidnap poor friendless wretches on the streets of seaport towns in England and ship them off to Virginia to be sold into servitude. At first these white servants were more numerous than the negroes, but before the end of the seventeenth century the blacks had come to be much the more numerous.

Slavery

In this rural community the owners of plantations came from the same classes of society as the settlers of New England; they were for the most part country squires and yeomen. But while in New England there was no lower class of society sharply marked off from the upper, on the other hand in Virginia there was an insurmountable distinction between the owners of plantations and the so-called "mean whites" or "white trash." This class was originally formed of men and women who had been indentured white servants, and was increased by such shiftless people as now and then found their way to the colony, but could not win estates or obtain social recognition. With such a sharp division

Social position of settlers

between classes, an aristocratic type of society was developed in Virginia as naturally as a democratic type was developed in New England.

In Virginia there were no town-meetings. The distances between plantations coöperated with the distinction between classes to prevent the growth of such an institution. The English parish, with its churchwardens and vestry and clerk, was reproduced in Virginia under the same name, but with some noteworthy peculiarities. If the whole body of ratepayers had assembled in vestry meeting, to enact by-laws and assess taxes, the course of development would have been like that of the New England town-meeting. But instead of this the vestry, which exercised the chief authority in the parish, was composed of twelve chosen men. This was not government by a primary assembly, it was representative government. At first the twelve vestrymen were elected by the people of the parish, and thus resembled the selectmen of New England; but after a while "they obtained the power of filling vacancies in their own number," so that they became what is called a "close corporation," and the people had nothing to do with choosing them. Strictly speaking, that was not representative government; it was a step on the road that leads towards oligarchical or despotic government.

Virginia parishes

The vestry a close corporation

It was the vestry, thus constituted, that apportioned the parish taxes, appointed the churchwardens, presented the minister for induction into office, and acted as overseers of the poor. The minister presided in all vestry meetings. His salary was paid in tobacco, and in 1696 it was fixed by law at 16,000 pounds of tobacco yearly. In many parishes the churchwardens were the collectors of the parish taxes. The other officers, such as the sexton and the parish clerk, were appointed either by the minister or by the vestry.

Powers of the vestry

With the local government thus administered, we see that the larger part of the people had little directly to do. Nevertheless in these small neighbourhoods government was in full sight of the people. Its proceedings went on in broad daylight and were sustained by public sentiment. As Jefferson said, "The vestrymen are usually the most discreet farmers, so distributed through the parish that every part of it may be under the immediate eye of some one of them. They are well acquainted with the details and economy of private life, and they find sufficient inducements to execute their charge well, in their philanthropy, in the approbation of their neighbours, and the distinction which that gives them."[1]

[1] See Howard, *Local Constitutional History of the United States*, vol. i. p. 122.

The difference, however, between the New England township and the Virginia parish, in respect of self-government, was striking enough. We have now to note a further difference. In New England, as we have seen, the township was the unit of representation in the colonial legislature; but in Virginia the parish was not the unit of representation. The county was that unit. In the colonial legislature of Virginia the representatives sat not for parishes, but for counties. The difference is very significant. As the political life of New England was in a manner built up out of the political life of the towns, so the political life of Virginia was built up out of the political life of the counties. This was partly because the vast plantations were not grouped about a compact village nucleus like the small farms at the North, and partly because there was not in Virginia that Puritan theory of the church according to which each congregation is a self-governing democracy. The conditions which made the New England town-meeting were absent. The only alternative was some kind of representative government, and for this the county was a small enough area. The county in Virginia was much smaller than in Massachusetts or Connecticut. In a few instances the county consisted of only a single

The county was the unit of representation

parish; in some cases it was divided into two parishes, but oftener into three or more.

The county court was virtually a close corporation

In Virginia, as in England and in New England, the county was an area for the administration of justice. There were usually in each county eight justices of the peace, and their court was the counterpart of the Quarter Sessions in England. They were appointed by the governor, but it was customary for them to nominate candidates for the governor to appoint, so that practically the court filled its own vacancies and was a close corporation, like the parish vestry. Such an arrangement tended to keep the general supervision and control of things in the hands of a few families.

This county court usually met as often as once a month in some convenient spot answering to the shire town of England or New England. More often than not the place originally consisted of the court-house and very little else, and was named accordingly from the name of the county, as Hanover Court House or Fairfax Court House; and the small shire towns that have grown up in such spots often retain these names to the present day. Such names occur commonly in Virginia, West Virginia, and South Carolina, very rarely in Kentucky, North Carolina, Alabama, Ohio, and perhaps occasionally else-

The county seat or court house

where.[1] Their number has diminished from the tendency to omit the phrase "Court House," leaving the name of the county for that of the shire town, as for example in Culpeper, Va. In New England the process of naming has been just the reverse; as in Hartford County, Conn., or Worcester County, Mass., which have taken their names from the shire towns. In this, as in so many cases, whole chapters of history are wrapped up in geographical names.[2]

The county court in Virginia had jurisdiction in criminal actions not involving peril of life or limb, and in civil suits where the sum at stake exceeded twenty-five shillings. Smaller suits could be tried by a single justice. The court also had charge of the probate and administration of wills. The court appointed its own clerk, who kept the county records. It superintended the construction and repair of bridges and highways, and for this purpose divided the county into "precincts," and appointed annually for each precinct a highway surveyor. The court also seems to have appointed constables, one for each precinct.

Powers of the court

[1] In Mitchell's Atlas, 1883, the number of cases is in Va. 38, W. Va. 13, S. C. 16, N. C. 2, Ala. 1, Ky. 1, Ohio 1.

[2] A few of the oldest Virginia counties, organized as such in 1634, had arisen from the spreading and thinning of single settlements originally intended to be cities and named accordingly. Hence the curious names (at first sight unintelligible) of "James City County" and "Charles City County."

The justices could themselves act as coroners, but annually two or more coroners for each parish were appointed by the governor. As we have seen that the parish taxes — so much for salaries of minister and clerk, so much for care of church buildings, so much for relief of the poor, etc. — were computed and assessed by the vestry; so the county taxes, for care of court-house and jail, roads and bridges, coroner's fees, and allowances to the representatives sent to the colonial legislature, were computed and assessed by the county court. The general taxes for the colony were estimated by a committee of the legislature, as well as the county's share of the colony tax. The taxes for the county, and sometimes the taxes for the parish also, were collected by the sheriff. They were usually paid, not in money, but in tobacco; and the sheriff was the custodian of this tobacco, responsible for its proper disposal. The sheriff was thus not only the officer for executing the judgments of the court, but he was also county treasurer and collector, and thus exercised powers almost as great as those of the sheriff in England in the twelfth century. He also presided over elections for representatives to the legislature. It is interesting to observe how this very important officer was chosen. "Each year the court presented the names of three of its members to the governor, who appointed one,

The sheriff

generally the senior justice, to be the sheriff of the county for the ensuing year."[1] Here again we see this close corporation, the county court, keeping the control of things within its own hands.

One other important county officer needs to be mentioned. We have seen that in early New England each town had its train-band or company of militia, and that the companies in each county united to form the county regiment. In Virginia it was just the other way. Each county raised a certain number of troops, and because it was not convenient for the men to go many miles from home in assembling for purposes of drill, the county was subdivided into military districts, each with its company, according to rules laid down by the governor. The military command in each county was vested in the county lieutenant, an officer answering in many respects to the lord-lieutenant of the English shire at that period. Usually he was a member of the governor's council, and as such exercised sundry judicial functions. He bore the honorary title of "colonel," and was to some extent regarded as the governor's deputy; but in later times his duties were confined entirely to military matters.[2]

The county lieutenant

[1] Edward Channing, *op. cit.* p. 478.

[2] For an excellent account of local government in Virginia before the Revolution, see Howard, *Local Const. Hist. of the*

If now we sum up the contrasts between local government in Virginia and that in New England, we observe: —

1. That in New England the management of local affairs was mostly in the hands of town officers, the county being superadded for certain purposes, chiefly judicial; while in Virginia the management was chiefly in the hands of county officers, though certain functions, chiefly ecclesiastical, were reserved to the parish.

2. That in New England the local magistrates were almost always, with the exception of justices, chosen by the people; while in Virginia, though some of them were nominally appointed by the governor, yet in practice they generally contrived to appoint themselves — in other words the local boards practically filled their own vacancies and were self-perpetuating.

These differences are striking and profound. There can be no doubt that, as Thomas Jefferson clearly saw, in the long run the interests of political liberty are much safer under the New England system than under the Virginia system. Jefferson said, "Those wards, called townships in New England, are the vital principle of their governments, and have proved themselves the wisest invention ever devised by the wit of man for

Jefferson's opinion of township government

U. S., vol. i. pp. 388–407; also Edward Ingle, in Johns Hopkins Univ. Studies, III., ii.–iii.

the perfect exercise of self-government, and for its preservation.[1] . . . As Cato, then, concluded every speech with the words *Carthago delenda est*, so do I every opinion with the injunction: 'Divide the counties into wards!'"[2]

We must, however, avoid the mistake of making too much of this contrast. As already hinted, in those rural societies where people generally knew one another, its effects were not so far-reaching as they would be in the more complicated society of to-day. Even though Virginia had not the town-meeting, "it had its familiar court-day," which "was a holiday for all the country-side, especially in the fall and spring. From all directions came in the people on horseback, in wagons, and afoot. On the court-house green assembled, in indiscriminate confusion, people of all classes, — the hunter from the backwoods, the owner of a few acres, the grand proprietor, and the grinning, heedless negro. Old debts were settled, and new ones made; there were auctions, transfers of property, and, if election times were near, stump-speaking."[3]

"Court-day"

For seventy years or more before the Declaration of Independence the matters of general public concern, about which stump speeches were made on Virginia court-days, were very

[1] Jefferson's *Works*, vii. 13. [2] *Id.*, vi. 544.
[3] Ingle, *loc. cit.*

similar to those that were discussed in Massachusetts town-meetings when representatives were to be chosen for the legislature. Such questions generally related to some real or alleged encroachment upon popular liberties by the royal governor, who, being appointed and sent from beyond sea, was apt to have ideas and purposes of his own that conflicted with those of the people. This perpetual antagonism to the governor, who represented British imperial interference with American local self-government, was an excellent schooling in political liberty, alike for Virginia and for Massachusetts. When the stress of the Revolution came, these two leading colonies cordially supported each other, and their political characteristics were reflected in the kind of achievements for which each was especially distinguished. The Virginia system, concentrating the administration of local affairs in the hands of a few county families, was eminently favourable for developing skilful and vigorous leadership. And while in the history of Massachusetts during the Revolution we are chiefly impressed with the wonderful degree in which the mass of the people exhibited the kind of political training that nothing in the world except the habit of parliamentary discussion can impart; on the other hand, Virginia at that

Virginia prolific in great leaders

time gave us — in Washington, Jefferson, Henry, Madison, and Marshall, to mention no others — such a group of consummate leaders as the world has seldom seen equalled.

IV

TOWNSHIP AND COUNTY

§ 1. *Various Local Systems.*

WE have now completed our outline sketch of town and county government as illustrated in New England on the one hand and in Virginia on the other. There are some important points in the early history of local government in other portions of the original thirteen states, to which we must next call attention; and then we shall be prepared to understand the manner in which our great western country has been organized under civil government. We must first say something about South Carolina and Maryland.

Parishes in South Carolina

South Carolina was settled from half a century to a century later than Massachusetts and Virginia, and by two distinct streams of immigration. The lowlands near the coast were settled by Englishmen and by French Huguenots, but the form of government was purely English. There were parishes, as in Virginia, but popular election played a greater part in them. The vestrymen were elected yearly by all the taxpayers of the parish.

The minister was also elected by his people, and after 1719 each parish sent its representatives to the colonial legislature, though in a few instances two parishes were joined together for the purpose of choosing representatives. The system was thus more democratic than in Virginia; and in this connection it is worth while to observe that parochial libraries and free schools were established as early as 1712, much earlier than in Virginia.

During the first half of the eighteenth century a very different stream of immigration, coming mostly along the slope of the Alleghanies from Virginia and Pennsylvania, and consisting in great part of Germans, Scotch Highlanders, and Scotch-Irish, peopled the upland western regions of South Carolina. For some time this territory had scarcely any civil organization. It was a kind of "wild West." There were as yet no counties in the colony. There was just one sheriff for the whole colony, who "held his office by patent from the Crown."[1] A court sat in Charleston, but the arm of justice was hardly long enough to reach offenders in the mountains. "To punish a horse-thief or prosecute a debtor one was sometimes compelled to travel a distance of several hundred miles, and be subjected to all the dangers and delays incident to a wild country."

The back country

[1] B. J. Ramage, in Johns Hopkins Univ. Studies, I., xii.

When people cannot get justice in what in civilized countries is the regular way, they will get it in some irregular way. So these mountaineers began to form themselves into bands known as "regulators," quite like the "vigilance committees" formed for the same purposes in California a hundred years later. For thieves and murderers the "regulators" provided a speedy trial, and the nearest tree served as a gallows.

The district system

In order to put a stop to this lynch law, the legislature in 1768 divided the back country into districts, each with its sheriff and court-house, and the judges were sent on circuit through these districts. The upland region with its districts was thus very differently organized from the lowland region with its parishes, and the effect was for a while almost like dividing South Carolina into two states. At first the districts were not allowed to choose their own sheriffs, but in course of time they acquired this privilege. It was difficult to apportion the representation in the state legislature so as to balance evenly the districts in the west against the parishes in the east, and accordingly there was much dissatisfaction, especially in the west which did not get its fair share. In 1786 the capital was moved from Charleston to Columbia as a concession to the

back country, and in 1808 a kind of compromise was effected, in such wise that the uplands secured a permanent majority in the house of representatives, while the lowlands retained control of the senate. The two sections had each its separate state treasurer, and this kind of double government lasted until the Civil War.

At the close of the war "the parishes were abolished and the district system was extended to the low country." But soon afterward, by the new constitution of 1868, the districts were abolished and the state was divided into thirty-four counties, each of which sends one senator to the state senate, while they send representatives in proportion to their population. In each county the people elect three county commissioners, a school commissioner, a sheriff, a judge of probate, a clerk, and a coroner. In one respect the South Carolina county is quite peculiar: it has no organization for judicial purposes. "The counties, like their institutional predecessor the district, are grouped into judicial circuits, and a judge is elected by the legislature for each circuit. Trial justices are appointed by the governor for a term of two years."

The modern South Carolina county

This system, like the simple county system everywhere, is a representative system; the people take no direct part in the management

of affairs. In one respect it seems obviously to need amendment. In states where county government has grown up naturally, after the Virginia fashion, the county is apt to be much smaller than in states where it is simply a district embracing several township governments. Thus the average size of a county in Massachusetts is 557 square miles, and in Connecticut 594 square miles; but in Virginia it is only 383 and in Kentucky 307 square miles. In South Carolina, however, where the county did not grow up of itself, but has been enacted, so to speak, by a kind of afterthought, it has been made too large altogether. The average area of the county in South Carolina is about 1000 square miles. Some counties are much larger. Colleton County in 1890 could hold the whole state of Rhode Island, with 600 square miles to spare. Such an area is much too extensive for local self-government. Its different portions are too far apart to understand each other's local wants, or to act efficiently toward supplying them; and roads, bridges, and free schools suffer accordingly. An unsuccessful attempt has been made to reduce the size of the counties. But what seems perhaps more likely to happen is the practical division of the counties into school districts, and the gradual development of these school districts into something like self-governing townships.

The counties are too large

To this very interesting point we shall again have occasion to refer.

We come now to Maryland. The early history of local institutions in this state is a fascinating subject of study. None of the American colonies had a more distinctive character of its own, or reproduced old English usages in a more curious fashion. There was much in colonial Maryland, with its lords of the manor, its bailiffs and seneschals, its courts baron and courts leet, to remind one of the England of the thirteenth century. But of these ancient institutions, long since extinct, there is but one that needs to be mentioned in the present connection. In Maryland the earliest form of civil community was called, not a parish or township, but a *hundred*. This curious designation is often met with in English history, and the institution which it describes, though now almost everywhere extinct, was once almost universal among men. It will be remembered that the oldest form of civil society, which is still to be found among some barbarous races, was that in which families were organized into clans and clans into tribes; and we saw that among our forefathers in England the dwelling-place of the clan became the township, and the home of the tribe became the shire or county. Now, in nearly all primitive societies that have been studied, we find a group

The *hundred* in Maryland

that is larger than the clan but smaller than the tribe, — or, in other words, intermediate between clan and tribe. Scholars usually call this group by its Greek name, *phratry*, or "brotherhood," for it was known long ago that in ancient Greece clans were grouped into brotherhoods and brotherhoods into tribes. Among uncivilized people all over the world we find this kind of grouping. For example, a tribe of North American Indians is regularly made up of phratries, and the phratries are made up of clans ; and, strange as it might at first seem, a good many half-understood features of early Greek and Roman society have had much light thrown upon them from the study of the usages of Cherokees and Mohawks. Wherever men have been placed, the problem of forming civil society has been in its main outlines the same ; and in its earlier stages it has been approached in pretty much the same way by all.

Clans, brotherhoods, and tribes

The ancient Romans had the brotherhood, and called it a *curia*. The Roman people were organized in clans, curies, and tribes. But for military purposes the curia was called a *century*, because it furnished a quota of one hundred men to the army. The word *century* originally meant a company of a hundred men, and it was only by a figure of speech that it afterward came to mean a period of a

Origin of the hundred

hundred years. Now among all Germanic peoples, including the English, the brotherhood seems to have been called the hundred. Our English forefathers seem to have been organized, like other barbarians, in clans, brotherhoods, and tribes; and the brotherhood was in some way connected with the furnishing a hundred warriors to the host. In the tenth century we find England covered with small districts known as hundreds. Several townships together made a hundred, and several hundreds together made a shire. The hundred was chiefly notable as the smallest area for the administration of justice. The hundred court was a representative body, composed of the lords of lands or their stewards, with the reeve and four selected men and the parish priest from each township. There was a chief magistrate for the hundred, known originally as the hundredman, but after the Norman Conquest as the high constable.

The hundred court

By the thirteenth century the importance of the hundred had much diminished. The need for any such body, intermediate between township and county, ceased to be felt, and the functions of the hundred were gradually absorbed by the county. Almost everywhere in England, by the reign of Elizabeth, the hundred had fallen into decay. It is curious that its name and some of its pecu-

Decay of the hundred

liarities should have been brought to America, and should in one state have remained to the present day. Some of the early settlements in Virginia were called hundreds, but they were practically nothing more than parishes, and the name soon became obsolete, except upon the map, where we still see, for example, Bermuda Hundred. But in Maryland the hundred flourished and became the political unit, like the township in New England. The hundred was the militia district, and the district for the assessment of taxes. In the earliest times it was also the representative district; delegates to the colonial legislature sat for hundreds. But in 1654 this was changed, and representatives were elected by counties. The officers of the Maryland hundred were the high constable, the commander of militia, the tobacco-viewer, the overseer of roads, and the assessor of taxes. The last-mentioned officer was elected by the people, the others were all appointed by the governor. The hundred had also its assembly of all the people, which was in many respects like the New England town-meeting. These hundred-meetings enacted by-laws, levied taxes, appointed committees, and often exhibited a vigorous political life. But after the Revolution they fell into disuse, and in 1824 the hundred became extinct in

Hundred-meetings in Maryland

Maryland; its organization was swallowed up in that of the county.

In Delaware, however, the hundred remains to this day. There it is simply an imperfectly developed township, but its relations with the county, as they have stood with but little change since 1743, are very interesting. Each hundred used to choose its own assessor of taxes, and every year in the month of November the assessors from all the hundreds used to meet in the county court-house, along with three or more justices of the peace and eight grand jurors, and assess the taxes for the ensuing year. A month later they assembled again, to hear complaints from persons who considered themselves overtaxed; and having disposed of this business, they proceeded to appoint collectors, one for each hundred. This county assembly was known as the "court of levy and appeal," or more briefly as the levy court. It appointed the county treasurer, the road commissioners, and the overseers of the poor. Since 1793 the levy court has been composed of special commissioners chosen by popular vote, but its essential character has not been altered. As a thoroughly representative body, it reminds one of the county courts of the Plantagenet period.

The hundred in Delaware

The levy court, or representative county assembly

We next come to the great middle colonies, Pennsylvania and New York. The most noteworthy feature of local government in Pennsylvania was the general election of county officers by popular vote. The county was the unit of representation in the colonial legislature, and on election days the people of the county elected at the same time their sheriffs, coroners, assessors, and county commissioners. In this respect Pennsylvania furnished a model which has been followed by most of the states since the Revolution, as regards the county governments. It is also to be noted that before the Revolution, as Pennsylvania increased in population, the townships began to participate in the work of government, each township choosing its overseers of the poor, highway surveyors, and inspectors of elections.[1]

The old Pennsylvania county

New York had from the very beginning the rudiments of an excellent system of local self-government. The Dutch villages had their assemblies, which under the English rule were developed into town-meetings, though with less ample powers than those of New England. The governing body of the New York town consisted of the con-

Town-meetings in New York

[1] Town-meetings were not quite unknown in Pennsylvania; see W. P. Holcomb, *Pennsylvania Boroughs*, Johns Hopkins Univ. Studies, IV., iv.

stable and eight overseers, who answered in most respects to the selectmen of New England. Four of the overseers were elected each year in town-meeting, and one of the retiring overseers was at the same time elected constable. In course of time the elective offices came to include assessors and collectors, town-clerk, highway surveyors, fence-viewers, pound-masters, and overseers of the poor. At first the town-meetings seem to have been held only for the election of officers, but they acquired to a limited extent the power of levying taxes and enacting by-laws. In 1703 a law was passed requiring each town to elect yearly an officer to be known as the "supervisor," whose duty was "to compute, ascertain, examine, oversee, and allow the contingent, publick, and necessary charges" of the county.[1] For this purpose the supervisors met once a year at the county town. The principle was the same as that of the levy court in Delaware. This board of supervisors was a strictly representative government, and formed a strong contrast to the close corporation by which county affairs were administered in Virginia. The New York system is of especial interest, because it has powerfully influenced the development of local institutions throughout the Northwest.

The county board of supervisors

[1] Howard, *Local Const. Hist.*, i. 111.

§ 2. *Settlement of the Public Domain.*

The westward movement of population in the United States has for the most part followed the parallels of latitude. Thus Virginians and North Carolinians, crossing the Alleghanies, settled Kentucky and Tennessee; thus people from New England filled up the central and northern parts of New York, and passed on into Michigan and Wisconsin; thus Ohio, Indiana, and Illinois received many settlers from New York and Pennsylvania. In the early times when Kentucky was settled, the pioneer would select a piece of land wherever he liked, and after having a rude survey made, and the limits marked by "blazing" the trees with a hatchet, the survey would be put on record in the state land-office. So little care was taken that "half a dozen patents would sometimes be given for the same tract. Pieces of land, of all shapes and sizes, lay between the patents. . . . Such a system naturally begat no end of litigation, and there remain in Kentucky curious vestiges of it" to this day.[1]

Westward movement of population

In order to avoid such confusion in the settlement of the territory north of the Ohio River, Congress passed the land-ordinance of 1785, which was based chiefly upon the suggestions

[1] Hinsdale, *Old Northwest*, p. 261.

of Thomas Jefferson, and laid the foundation of our simple and excellent system for surveying national lands. According to this system as gradually perfected, the government surveyors first mark out a north and south line which is called the *principal meridian*. Twenty-four such meridians have been established. The first was the dividing line between Ohio and Indiana; the last one runs through Oregon a little to the west of Portland. On each side of the principal meridian there are marked off subordinate meridians called *range lines*, six miles apart, and numbered east and west from their principal.[1] Then a true parallel of latitude is drawn, crossing these meridians at right angles. It is called the *base line*, or standard parallel. Eleven such base lines, for example, run across the great state of Oregon. Finally, on each side of the base line are drawn subordinate parallels called *township lines*, six miles apart, and numbered north and south from their base line. By these range lines and township lines the whole land is thus divided into townships just six miles square, and the townships are all numbered. Take, for example, the township of Deerfield in Michigan. That

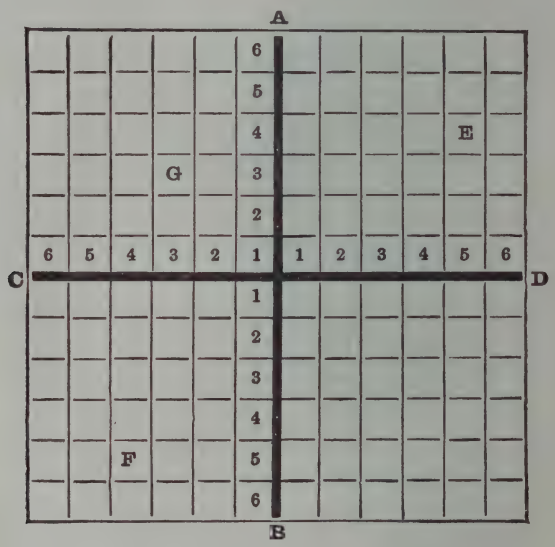
Method of surveying the public lands

Origin of Western townships,

[1] The following is a diagram of the first principal meridian, and of the base line running across southern Michigan. A B is the principal meridian; C D is the base line. The figures

is the fourth township north of the base line, and it is in the fifth range east of the first principal meridian. It would be called township number 4 north range 5 east, and was so called before it was settled and received a name. Evidently one must go 24 miles from the principal meridian, or 18 miles from the base line, in order

on the base line mark the range lines; the figures on the principal meridian mark the township lines. E is township 4 north in range 5 east; F is township 5 south in range 4 west; G is township 3 north in range 3 west.



As the intervals between meridians diminish as we go northward, it is sometimes necessary to introduce a correction line,

to enter this township. It is all as simple as the numbering of streets in Philadelphia.[1]

the nature of which will be seen from the following diagram : —

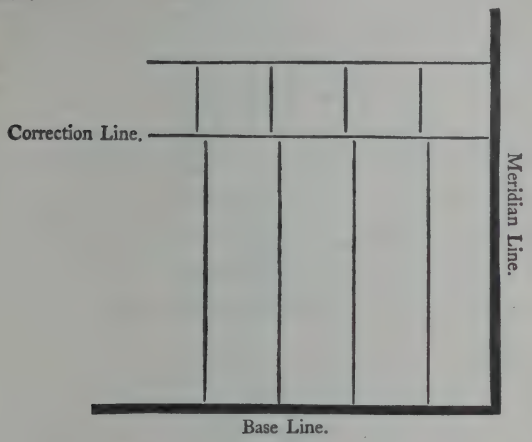


Diagram of Correction Line.

[1] In Philadelphia the streets for the most part cross each other at right angles and at equal distances, so that the city is laid out like a checkerboard. The parallel streets running in one direction have names, often taken from trees. Market Street is the central street from which the others are reckoned in both directions according to the couplet

"Market, Arch, Race, and Vine,
Chestnut, Walnut, Spruce, and Pine," etc.

The cross streets are not named but numbered, as First, Second, etc. The houses on one side of the street have odd numbers and on the other side even numbers, as is the general custom in the United States. With each new block a new century of numbers begins, although there are seldom more than forty real numbers in a block. For example, the corner

If now we look at Livingston County, in which this township of Deerfield is situated, we observe that the county is made up of sixteen townships, in four rows of four; and the next county, Washtenaw, is made up of twenty townships, in five rows of four. Maps of our Western states are thus apt to have somewhat of a checkerboard aspect, not unlike the wonderful country which Alice visited after she had gone through the looking-glass. Square townships are apt to make square or rectangular counties, and the state, too, is likely to acquire a more symmetrical shape. Nothing

and of Western counties

house on Market Street, just above Fifteenth, is 1501 Market Street. At somewhere about 1535 or 1539 you come to Sixteenth Street; then there is a break in the numbering, and the next corner house is 1601. So in going along a numbered street, say Fifteenth, from Market, the first number will be 1; after passing Arch, 101; after passing Race, 201, etc. With this system a very slight familiarity with the city enables one to find his way to any house, and to estimate the length of time needful for reaching it. St. Louis and some other large cities have adopted the Philadelphia plan, the convenience of which is as great as its monotony. In Washington the streets running in one direction are lettered A, B, C, etc., and the cross streets are numbered; and upon the checkerboard plan is superposed another plan in which broad avenues radiate in various directions from the Capitol, and a few other centres. These avenues cut through the square system of streets in all directions, so that instead of the dull checkerboard monotony there is an almost endless variety of magnificent vistas.

could be more unlike the jagged, irregular shape of counties in Virginia or townships in Massachusetts, which grew up just as it happened. The contrast is similar to that between Chicago, with its straight streets crossing at right angles, and Boston, or London, with their labyrinths of crooked lanes. For picturesqueness the advantage is entirely with the irregular city, but for practical convenience it is quite the other way. So with our western lands the simplicity and regularity of the system have made it a marvel of convenience for the settlers, and doubtless have had much to do with the rapidity with which civil governments have been built up in the West. "This fact," says a recent writer, "will be appreciated by those who know from experience the ease and certainty with which the pioneer on the great plains of Kansas, Nebraska, or Dakota is enabled to select his homestead or 'locate his claim' unaided by the expensive skill of the surveyor." [1]

There was more in it than this, however. There was a germ of organization planted in these western townships, which must be noted as of great importance. Each township, being six miles in length and six miles in breadth, was divided into thirty-six numbered sections, each containing just one square mile, or 640 acres. Each section, moreover, was divided into sixteen

[1] Howard, *Local Const. Hist. of U. S.*, vol. i. p. 139.

tracts of forty acres each, and sales to settlers were and are generally made by tracts at the rate of a dollar and a quarter per acre. For fifty dollars a man may buy forty acres of unsettled land, provided he will actually go and settle upon it, and this has proved to be a very effective inducement for enterprising young men to "go West." Many a tract thus bought for fifty dollars has turned out to be a soil upon which princely fortunes have grown. A tract of forty acres represents to-day in Chicago or Minneapolis an amount of wealth difficult for the imagination to grasp.

Some effects of the system

But in each of these townships there was at least one section which was set apart for a special purpose. This was usually the sixteenth section, nearly in the centre of the township; and sometimes the thirty-sixth section, in the southeast corner, was also reserved. These reservations were for the support of public schools. Whatever money was earned, by selling the land or otherwise, in these sections, was to be devoted to school purposes. This was a most remarkable provision. No other nation has ever made a gift for schools on so magnificent a scale. We have good reason for taking pride in such a liberal provision. But we ought not to forget that all national gifts really involve taxation, and this is no exception to the rule, although in this

The reservation for public schools

case it is not a taking of money, but a keeping of it back. The national government says to the local government, whatever revenues may come from that section of 640 acres, be they great or small, be it a spot in a rural grazing district, or a spot in some crowded city, are not to go into the pockets of individual men and women, but are to be reserved for public purposes. This is a case of disguised taxation, and may serve to remind us of what was said some time ago, that a government *cannot* give anything without in one way or another depriving individuals of its equivalent. No man can sit on a camp-stool and by any amount of tugging at that camp-stool lift himself over a fence. Whatever is given comes from somewhere, and whatever is given by governments comes from the people.

In this reservation there were the germs of township government

This reservation of one square mile in every township for purposes of education has already most profoundly influenced the development of local government in our western states, and in the near future its effects are likely to become still deeper and wider. To mark out a township on the map may mean very little, but when once you create in that township some institution that needs to be cared for, you have made a long stride toward inaugurating township government. When a state, as for instance

Illinois, grows up after the method just described, what can be more natural than for it to make the township a body corporate for school purposes, and to authorize its inhabitants to elect school officers and tax themselves, so far as may be necessary, for the support of the schools? But the school-house, in the centre of the township, is soon found to be useful for many purposes. It is convenient to go there to vote for state officers or for congressmen and president, and so the school township becomes an election district. Having once established such a centre, it is almost inevitable that it should sooner or later be made to serve sundry other purposes, and become an area for the election of constables, justices of the peace, highway surveyors, and overseers of the poor. In this way a vigorous township government tends to grow up about the school-house as a nucleus, somewhat as in early New England it grew up about the church.

This tendency may be observed in almost all the western states and territories, even to the Pacific coast. When the western country was first settled, representative county government prevailed almost everywhere. This was partly because the earliest settlers of the West came in much greater numbers from the middle and southern states than from New England. It was also partly be-

At first the county system prevailed

cause, so long as the country was thinly settled, the number of people in a township was very small, and it was not easy to have a government smaller than that of the county. It was something, however, that the little squares on the map, by grouping which the counties were made, were already called townships. There is much in a name. It was still more important that these townships were only six miles square; for that made it sure that, in due course of time, when population should have become dense enough, they would be convenient areas for establishing township government.

§ 3. *The Representative Township-County System in the West.*

The first western state to adopt the town-meeting was Michigan, where the great majority of the settlers had come from New England, or from central New York, which was a kind of westward extension of New England.[1] Counties were established in Michigan Territory in 1805, and townships were first incorporated in 1825. This was twelve years before Michigan became a state. At first the powers of the town-meeting were narrowly

The town-meeting in Michigan

[1] "Of the 496 members of the Michigan Pioneer Association in 1881, 407 are from these sections" [New England and New York]. Bemis, *Local Government in Michigan and the Northwest*, Johns Hopkins Univ. Studies, I., v.

limited. It elected the town and county officers, but its power of appropriating money seems to have been restricted to the purpose of extirpating noxious animals and weeds. In 1827, however, it was authorized to raise money for the support of schools, and since then its powers have steadily increased, until now they approach those of the town-meeting in Massachusetts.

Settlement of Illinois

The history of Illinois presents an extremely interesting example of rivalry and conflict between the town system of New England and the county system of the South. Observe that this great state is so long that, while the parallel of latitude starting from its northern boundary runs through Marblehead in Massachusetts, the parallel through its southernmost point, at Cairo, runs a little south of Petersburg in Virginia. In 1818, when Illinois framed its state government and was admitted to the Union, its population was chiefly in the southern half, and composed for the most part of pioneers from Virginia and Virginia's daughter-state, Kentucky. These men brought with them the old Virginia county system, but with the very great difference that the county officers were not appointed by the governor, or allowed to be a self-perpetuating board, but were elected by the people of the county. This was a true advance in the democratic direction, but an essential defect of the southern system re-

mained in the absence of any kind of local meeting for the discussion of public affairs and the enactment of local laws.

By the famous Ordinance of 1787, to which we shall again have occasion to refer, negro slavery had been forever prohibited to the north of the Ohio River, so that, in spite of the wishes of her early settlers, Illinois was obliged to enter the Union as a free state. But in 1820 Missouri was admitted as a slave state, and this turned the stream of southern migration aside from Illinois to Missouri. These emigrants, to whom slaveholding was a mark of social distinction, preferred to go where they could own slaves. About the same time settlers from New England and New York, moving along the southern border of Michigan and the northern borders of Ohio and Indiana, began pouring into the northern part of Illinois. These newcomers did not find the representative county system adequate for their needs, and they demanded township government. A memorable political struggle ensued between the northern and southern halves of the state, ending in 1848 with the adoption of a new constitution. It was provided "that the legislature should enact a general law for the political organization of townships, under which any county might act whenever a majority of its

Effects of the Ordinance of 1787

voters should so determine."[1] This was introducing the principle of local option, and in accordance therewith township governments with town-meetings were at once introduced in the northern counties of the state, while the southern counties kept on in the old way. Now comes the most interesting part of the story. The two systems being thus brought into immediate contact in the same state, with free choice between them left to the people, the northern system has slowly but steadily supplanted the southern system, until at the present day only one fifth part of the counties in Illinois remain without township government.

Intense vitality of the township system

This example shows the intense vitality of the township system. It is the kind of government that people are sure to prefer when they have once tried it under favourable conditions. In the West the hostile conditions against which it has to contend are either the recent existence of negro slavery and the ingrained prejudice in favour of the Virginia method, as in Missouri; or simply the sparseness of population, as in Nebraska. Time will evidently remove the latter obstacle, and probably the former also. It is very significant that in Missouri, which began so lately as 1879 to erect township governments under a

[1] Shaw, *Local Government in Illinois*, Johns Hopkins Univ. Studies, I., iii.

local option law similar to that of Illinois, the process has already extended over about one sixth part of the state; and in Nebraska, where the same process began in 1883, it has covered nearly one third of the organized counties of the state.

The principle of local option as to government has been carried still farther in Minnesota and Dakota. The method just described may be called county option; the question is decided by a majority vote of the people of the county. But in Minnesota in 1878 it was enacted that as soon as any one of the little square townships in that state should contain as many as twenty-five legal voters, it might petition the board of county commissioners and obtain a township organization, even though the adjacent townships in the same county should remain under county government only. Five years later the same provision was adopted by Dakota, and under it township government is steadily spreading.

County option and township option

Two distinct grades of township government are to be observed in the states west of the Alleghanies; the one has the town-meeting for deliberative purposes, the other has not. In Ohio and Indiana, which derived their local institutions largely from Pennsylvania, there is no such town-meeting, the administrative offices are more or less

Grades of township government

concentrated in a board of trustees, and the town is quite subordinate to the county. The principal features of this system have been reproduced in Iowa, Missouri, and Kansas.

The other system was that which we have seen beginning in Michigan, under the influence of New York and New England. Here the town-meeting, with legislative powers, is always present. The most noticeable feature of the Michigan system is the relation between township and county, which was taken from New York. The county board is composed of the supervisors of the several townships, and thus represents the townships. It is the same in Illinois. It is held by some writers that this is the most perfect form of local government,[1] but on the other hand the objection is made that county boards thus constituted are too large.[2] We have seen that in the states in question there are not less than 16, and sometimes more than 20, townships in each county. In a board of 16 or 20 members it is hard to fasten responsibility upon anybody in particular; and thus it becomes possible to have "combinations," and to indulge in that exchange of favours known as "log-rolling," which is one of the besetting sins of all large representative bodies. Re-

[1] Howard, *Local Const. Hist.*, passim.

[2] Bemis, *Local Government in Michigan*, Johns Hopkins Univ. Studies, I., v.

sponsibility is more concentrated in the smaller county boards of Massachusetts, Wisconsin, and Minnesota.

It is one signal merit of the peaceful and untrammelled way in which American institutions have grown up, the widest possible scope being allowed to individual and local preferences, that different states adopt different methods of attaining the great end at which all are aiming in common, — good government. One part of our vast country can profit by the experience of other parts, and if any system or method thus comes to prevail everywhere in the long run, it is likely to be by reason of its intrinsic excellence. Our country affords an admirable field for the study of the general principles which lie at the foundations of universal history. Governments, large and small, are growing up all about us, and in such wise that we can watch the processes of growth, and learn lessons which, after making due allowances for difference of circumstance, are very helpful in the study of other times and countries.

An excellent result of the absence of centralization in the United States

The general tendency toward the spread of township government in the more recently settled parts of the United States is unmistakable, and I have already remarked upon the influence of the public school system in aiding this tendency. The school district, as a prepara-

tion for the self-governing township, is already exerting its influence in Colorado, Nevada, California, Wyoming, Montana, Idaho, Oregon, and Washington.

Something similar is going on in the southern states, as already hinted in the case of South Carolina. Local taxation for school purposes has also been established in Kentucky and Tennessee, in both Virginias, and elsewhere. There has thus begun a most natural and wholesome movement, which might easily be checked, with disastrous results, by the injudicious appropriation of national revenue for the aid of southern schools. It is to be hoped that throughout the southern states, as formerly in Michigan, the self-governing school district may prepare the way for the self-governing township, with its deliberative town-meeting. Such a growth must needs be slow, inasmuch as it requires long political training on the part of the negroes and the lower classes of white people; but it is along such a line of development that such political training can best be acquired; and in no other way is complete harmony between the two races so likely to be secured.

Township government is germinating in the South

Dr. Edward Bemis, who in a profoundly interesting essay[1] has called attention to this

[1] *Local Government in Michigan and the Northwest*, Johns Hopkins Univ. Studies, I., v.

function of the school district as a stage in the evolution of the township, remarks also upon the fact that "it is in the local government of the school district that woman suffrage is being tried." In several states women may vote for school committees, or may be elected to school committees, or to sundry administrative school offices. At present (1898) there are not less than twenty-two states in which women have school suffrage. In Utah, Idaho, Colorado, and Wyoming women have full suffrage, voting at municipal, state, and national elections. In Kansas they have municipal suffrage, in Iowa bond suffrage, and in Louisiana tax-paying women can vote on questions submitted to tax-payers as such. In England, it may be observed, unmarried women and widows who pay taxes vote not only on school matters, but generally in the local elections of vestries, boroughs, and poor-law unions. In the new Parish Councils Bill this municipal suffrage is extended to married women. In the Isle of Man women vote for members of Parliament. In South Australia they have full suffrage, and in 1893 they were endowed with full rights of suffrage in New Zealand.

Woman suffrage

The historical reason why the suffrage has so generally been restricted to men is perhaps to be sought in the conditions under which voting originated. In primeval times voting was prob-

ably adopted as a substitute for fighting. The smaller and presumably weaker party yielded to the larger without an actual trial of physical strength; heads were counted instead of being broken. Accordingly it was only the warriors who became voters. The restriction of political activity to men has also probably been emphasized by the fact that all the higher civilizations have passed through a well-defined patriarchal stage of society in which each household was represented by its oldest warrior. From present indications it would seem that under the conditions of modern industrial society the arrangements that have so long subsisted are likely to be very essentially altered.

V

THE CITY

§ 1. *Direct and Indirect Government.*

IN the foregoing survey of local institutions and their growth, we have had occasion to compare and sometimes to contrast two different methods of government as exemplified on the one hand in the township and on the other hand in the county. In the former we have direct government by a primary assembly,[1] the town meeting; in the latter we have indirect government by a representative board. If the county board, as in colonial Virginia, perpetuates itself, or is appointed otherwise than by popular vote, it is not strictly a representative board, in the modern sense of the phrase; the government is a kind of oligarchy. If, as in colonial Pennsylvania, and in the United States generally to-day, the county board consists of officers elected by the people, the county government is a representative democracy. The township government,

Summary of foregoing results

[1] A primary assembly is one in which the members attend of their own right, without having been elected to it; a representative assembly is composed of elected delegates.

on the other hand, as exemplified in New England and in the northwestern states which have adopted it, is a pure democracy. The latter, as we have observed, has one signal advantage over all other kinds of government, in so far as it tends to make every man feel that the business of government is part of his own business, and that where he has a stake in the management of public affairs he has also a voice. When people have got into the habit of leaving local affairs to be managed by representative boards, their active interest in local affairs is liable to be somewhat weakened, as all energies in this world are weakened, from want of exercise. When some fit subject of complaint is brought up, the individual is too apt to feel that it is none of his business to furnish a remedy, let the proper officers look after it. He can vote at elections, which is a power; he can perhaps make a stir in the newspapers, which is also a power; but personal participation in town-meeting is likewise a power, the necessary loss of which, as we pass to wider spheres of government, is unquestionably to be regretted.

Nevertheless the loss is inevitable. A primary assembly of all the inhabitants of a county, for purposes of local government, is out of the question. There must be representative government, and for this purpose the county system,

an inheritance from the ancient English shire, has furnished the needful machinery. Our county government is near enough to the people to be kept in general from gross abuses of power. There are many points which can be much better decided in small representative bodies than in large miscellaneous meetings. The responsibility of our local boards has been fairly well preserved. The county system has had no mean share in keeping alive the spirit of local independence and self-government among our people. As regards efficiency of administration, it has achieved commendable success, except in the matter of rural highways; and if our roads are worse than those of any other civilized country, that is due not so much to imperfect administrative methods as to other causes, — such as the sparseness of population, the fierce extremes of sunshine and frost, and the fact that since this huge country began to be reclaimed from the wilderness, the average voter, who has not travelled in Europe, knows no more about good roads than he knows about the temples of Pæstum or the pictures of Tintoretto, and therefore does not realize what demands he may reasonably make.

Direct government impossible in a county

This last consideration applies in some degree, no doubt, to the ill-paved and filthy streets which are the first things to arrest one's atten-

tion in most of our great cities. It is time for us now to consider briefly our general system of city government, in its origin and in some of its most important features.

Representative government in counties is necessitated by the extent of territory covered; in cities it is necessitated by the multitude of people. When the town comes to have a very large population, it becomes physically impossible to have town-meetings. No way could be devised by which all the tax-payers of the city of New York could be assembled for discussion. In 1820 the population of Boston was about 40,000, of whom rather more than 7000 were voters qualified to attend the town-meetings. Consequently "when a town-meeting was held on any exciting subject in Faneuil Hall, those only who obtained places near the moderator could even hear the discussion. A few busy or interested individuals easily obtained the management of the most important affairs in an assembly in which the greater number could have neither voice nor hearing. When the subject was not generally exciting, town-meetings were usually composed of the selectmen, the town officers, and thirty or forty inhabitants. Those who thus came were for the most part drawn to it from some official duty or private interest, which, when performed or attained, they gener-

The Boston town-meeting in 1820

ally troubled themselves but little, or not at all, about the other business of the meeting."[1]

Under these circumstances it was found necessary in 1822 to drop the town-meeting altogether and devise a new form of government for Boston. After various plans had been suggested and discussed, it was decided that the new government should be vested in a Mayor; a select council of eight persons to be called the Board of Aldermen; and a Common Council of forty-eight persons, four from each of twelve wards into which the city was to be divided. All these officials were to be elected by the people. At the same time the official name "Town of Boston" was changed to "City of Boston."

There is more or less of history involved in these offices and designations, to which we may devote a few words of explanation. In New England local usage there is an ambiguity in the word "town." As an official designation it means the inhabitants of a township considered as a community or corporate body. In common parlance it often means the patch of land constituting the township on the map, as when we say that Squire Brown's elm is "the biggest tree in town." But it still oftener means a collection of streets, houses, and families too large to be

Distinctions between towns and cities

[1] Quincy's *Municipal History of Boston*, p. 28.

called a village, but without the municipal government that characterizes a city. Sometimes it is used *par excellence* for a city, as when an inhabitant of Cambridge, itself a large suburban city, speaks of going to Boston as going "into town." But such cases are of course mere survivals from the time when the suburb was a village. In American usage generally the town is something between village and city, a kind of inferior or incomplete city. The image which it calls up in the mind is of something urban and not rural. This agrees substantially with the usage in European history, where "town" ordinarily means a walled town or city as contrasted with a village. In England the word is used either in this general sense, or more specifically as signifying an inferior city, as in America. But the thing which the town lacks, as compared with the complete city, is very different in America from what it is in England. In America it is municipal government — with mayor, aldermen, and common council — which must be added to the town in order to make it a city. In England the town may (and usually does) have this municipal government; but it is not distinguished by the Latin name "city" unless it has a cathedral and a bishop. Or in other words the English city is, or has been, the capital of a diocese. Other towns in England are distinguished as

"boroughs," an old Teutonic word which was originally applied to towns as *fortified* places.[1] The voting inhabitants of an English city are called "citizens;" those of a borough are called "burgesses." Thus the official corporate designation of Cambridge is "the mayor, aldermen, and *burgesses* of Cambridge;" but Oxford is the seat of a bishopric, and its corporate designation is "the mayor, aldermen, and *citizens* of Oxford."

§ 2. *Origin of English Boroughs and Cities.*

What, then, was the origin of the English borough or city? In the days when Roman legions occupied for a long time certain military stations in Britain, their camps were apt to become centres of trade and thus to grow into cities. Such places were generally known as *casters* or *chesters*, from the Latin *castra*, "camp," and there are many of them on the map of England to-day. But these were exceptional cases. As a rule the origin of the borough was as purely English as its name. We have seen that the town was originally the

"Chesters"

[1] The word appears in many town names, such as *Edinburgh, Scarborough, Canterbury, Bury St. Edmunds;* and on the Continent, as *Hamburg, Cherbourg, Burgos*, etc. In Connecticut, New Jersey, Pennsylvania, and Minnesota, the name "borough" is applied to a certain class of municipalities with some of the powers of cities.

dwelling-place of a stationary clan, surrounded by palisades or by a dense quickset hedge.

Coalescence of towns into fortified boroughs

Now where such small enclosed places were thinly scattered about they developed simply into villages. But where, through the development of trade or any other cause, a good many of them grew up close together within a narrow compass, they gradually coalesced into a kind of compound town; and with the greater population and greater wealth, there was naturally more elaborate and permanent fortification than that of the palisaded village. There were massive walls and frowning turrets, and the place came to be called a fortress or "borough." The borough, then, "was simply several townships packed tightly together; a hundred smaller in extent and thicker in population than other hundreds." [1]

The borough as a hundred

From this compact and composite character of the borough came several important results. We have seen that the hundred was the smallest area for the administration of justice. The township was in many respects self-governing, but it did not have its court, any more than the New England township of the present day has its court. The lowest court was that of the hundred, but as the borough was equivalent to a hundred it soon

[1] Freeman, *Norman Conquest*, vol. v. p. 466. For a description of the *hundred*, see above, pp. 79–83.

came to have its own court. And although much obscurity still surrounds the early history of municipal government in England, it is probable that this court was a representative board, like any other hundred court, and that the relation of the borough to its constituent townships resembled the relation of the modern city to its constituent wards.

The borough as a county

But now as certain boroughs grew larger and annexed outlying townships, or acquired adjacent territory which presently became covered with streets and houses, their constitution became still more complex. The borough came to embrace several closely packed hundreds, and thus became analogous to a shire. In this way it gained for itself a sheriff and the equivalent of a county court. For example, under the charter granted by Henry I. in 1101, London was expressly recognized as a county by itself. Its burgesses could elect their own chief magistrate, who was called the port-reeve, inasmuch as London is a seaport ; in some other towns he was called the borough-reeve. He was at once the chief executive officer and the chief judge. The burgesses could also elect their sheriff, although in all rural counties Henry's father, William the Conqueror, had lately deprived the people of this privilege and appointed the sheriffs himself. London had its representative board, or council, which was the equiva-

lent of a county court. Each ward, moreover, had its own representative board, which was the equivalent of a hundred court. "Within the wards, or hundreds, the burgesses were grouped together in township, parish, or manor. . . . Into the civic organization of London, to whose special privileges all lesser cities were ever striving to attain, the elements of local administration embodied in the township, the hundred, and the shire thus entered as component parts."[1] Constitutionally, therefore, London was a little world in itself, and in a less degree the same was true of other cities and boroughs which afterwards obtained the same kind of organization, as for example, York and Newcastle, Lincoln and Norwich, Southampton and Bristol.

The guilds

In such boroughs or cities all classes of society were brought into close contact, — barons and knights, priests and monks, merchants and craftsmen, free labourers and serfs. But trades and manufactures, which always had so much to do with the growth of the city, acquired the chief power and the control of the government. From an early period tradesmen and artisans found it worth while to form themselves into guilds or brotherhoods, in order to protect their persons and property

[1] Hannis Taylor, *Origin and Growth of the English Constitution*, vol. i. p. 458.

against insult and robbery at the hands of great lords and their lawless military retainers. Thus there came to be guilds, or "worshipful companies," of grocers, fishmongers, butchers, weavers, tailors, ironmongers, carpenters, saddlers, armourers, needle-makers, etc. In large towns there was a tendency among such trade guilds to combine in a "united brotherhood," or "town guild," and this organization at length acquired full control of the city government. In London this process was completed in the course of the thirteenth century. To obtain the full privileges of citizenship one had to be enrolled in a guild. The guild hall became the city hall. The *aldermen*, or head men of sundry guilds, became the head men of the several wards. There was a representative board, or *common council*, elected by the citizens. The aldermen and common council held their meeting in the Guildhall, and over these meetings presided the chief magistrate, or port-reeve, who by this time, in accordance with the fashion then prevailing, had assumed the French title of *mayor*. As London had come to be a little world in itself, so this city government reproduced on a small scale the national government; the mayor answering to the king, the aristocratic board of aldermen to the House of Lords, and the democratic common council to the House of Commons.

Mayor, aldermen, and common council

A still more suggestive comparison, perhaps, would be between the aldermen and our federal Senate, since the aldermen represented wards, while the common council represented the citizens.

The city of London

The constitution thus perfected in the city of London [1] six hundred years ago has remained to this day without essential change. The voters are enrolled members of companies which represent the ancient guilds. Each year they choose one of the aldermen to be lord mayor. Within the city he has precedence next to the sovereign and before the royal family; elsewhere he ranks as an earl, thus indicating the equivalence of the city to a county, and with like significance he is lord lieutenant of the city and justice of the peace. The twenty-six aldermen, one for each ward, are elected by the people, such as are entitled to vote for members of Parliament; they are justices of the peace. The common councilmen, 206 in number, are also elected by the people, and their

[1] The city of London extends east and west from the Tower to Temple Bar, and north and south from Finsbury to the Thames, with a population of not more than 100,000, and is but a small part of the enormous metropolitan area now known as London, which is a circle of twelve miles radius in every direction from its centre at Charing Cross, with a population of more than 5,000,000. This vast area is an agglomeration of many parishes, manors, etc.

legislative power within the city is practically supreme; Parliament does not think of overruling it. And the city government thus constituted is one of the most clean-handed and efficient in the world.[1]

The development of other English cities and boroughs was so far like that of London that merchant guilds generally obtained control, and government by mayor, aldermen, and common council came to be the prevailing type. Having also their own judges and sheriffs, and not being obliged to go outside of their own walls to obtain justice, to enforce contracts and punish crime, their efficiency as independent self-governing bodies was great, and in many a troubled time they served as staunch bulwarks of English liberty. The strength of their turreted walls was more than supplemented by the length of their purses, and such immunity from the encroachments of lords and king as they could not otherwise win, they contrived to buy. Arbitrary taxation they generally escaped by compounding with the royal exchequer in a fixed sum or quit-rent, known as the *firma burgi*. We have observed the especial privilege which Henry I. confirmed to London, of electing its own sheriff. London had been prompt in recognizing his title to the crown, and such support, in days when the succession was not

English cities the bulwarks of liberty

[1] Loftie, *History of London*, vol. i. p. 446.

well regulated, no prudent king could afford to pass by without some substantial acknowledgment. It was never safe for any king to trespass upon the liberties of London, and through the worst times that city has remained a true republic with liberal republican sentiments. If George III. could have been guided by the advice of London, as expressed by its great alderman Beckford, the American colonies would not have been driven into rebellion.

The most signal part played by the English boroughs and cities, in securing English freedom, dates from the thirteenth century, when the nation was vaguely struggling for representative government on a national scale, as a means of curbing the power of the Crown. In that memorable struggle, the issue of which to some extent prefigured the shape that the government of the United States was to take five hundred years afterward, the cities and boroughs supported Simon de Montfort, the leader of the popular party and one of the foremost among the heroes and martyrs of English liberty. Accordingly, on the morrow of his decisive victory at Lewes in 1264, when for the moment he stood master of England, as Cromwell stood four centuries later, Simon called a Parliament to settle the affairs of the kingdom, and to this Parliament he invited, along with the lords who came by

Simon de Montfort and the cities

hereditary custom, not only two elected representatives from each rural county, but also two elected representatives from each city and borough. In this Parliament, which met in 1265, the combination of rural with urban representatives brought all parts of England together in a grand representative body, the House of Commons, with interests in common; and thus the people presently gained power enough to defeat all attempts to establish irresponsible government, such as we call despotism, on the part of the Crown.

If we look at the later history of English cities and boroughs, it appears that, in spite of the splendid work which they did for the English people at large, they did not always succeed in preserving their own liberties unimpaired. London, indeed, has always maintained its character as a truly representative republic. But in many English cities, during the Tudor and Stuart periods, the mayor and aldermen contrived to dispense with popular election, and thus to become close corporations or self-perpetuating oligarchical bodies. There was a notable tendency toward this sort of irresponsible government in the reign of James I., and the Puritans who came to the shores of Massachusetts Bay were inspired with a feeling of revolt against such methods. This doubtless lent an emphasis to

Oligarchical abuses in English cities (cir. 1500–1835)

the mood in which they proceeded to organize themselves into free self-governing townships. The oligarchical abuses in English cities and boroughs remained until they were swept away by the great Municipal Reform Act of 1835.

The first city governments established in America were framed in conscious imitation of the corresponding institutions in England. The oldest city government in the United States is that of New York. Shortly after the town was taken from the Dutch in 1664, the new governor, Colonel Nichols, put an end to its Dutch form of government, and appointed a mayor, five aldermen, and a sheriff. These officers appointed inferior officers, such as constables, and little or nothing was left to popular election. But in 1686, under Governor Dongan, New York was regularly incorporated and chartered as a city. Its constitution bore an especially close resemblance to that of Norwich, then the third city in England in size and importance. The city of New York was divided into six wards. The governing corporation consisted of the mayor, the recorder, the town-clerk, six aldermen, and six assistants. All the land not taken up by individual owners was granted as public land to the corporation, which in return paid into the British exchequer one beaver-skin yearly. This was a

Government of the city of New York (1686–1821)

survival of the old quit-rent or *firma burgi*.[1] The city was made a county, and thus had its court, its sheriff and coroner, and its high constable. Other officers were the chamberlain or treasurer, seven inferior constables, a sergeant-at-arms, and a clerk of the market, who inspected weights and measures, and punished delinquencies in the use of them. The principal judge was the recorder, who, as we have just seen, was one of the corporation. The aldermen, assistants, and constables were elected annually by the people; but the mayor and sheriff were appointed by the governor. The recorder, town-clerk, and clerk of the market were to be appointed by the king, but in case the king neglected to act, these appointments also were made by the governor. The high constable was appointed by the mayor, the treasurer by the mayor, aldermen, and assistants, who seem to have answered to the ordinary common council. The mayor, recorder, and aldermen, without the assistants, were a judicial body, and held a weekly court of common pleas. When the assistants were added, the whole became a legislative body empowered to enact by-laws.

Although this charter granted very imperfect powers of self-government, the people contrived to live under it for a hundred and thirty-five

[1] Jameson, "The Muncipal Government of New York," *Mag. Amer. Hist.*, vol. viii. p. 609.

years, until 1821. Before the Revolution their petitions succeeded in obtaining only a few unimportant amendments.[1] When the British army captured the city in September, 1776, it was forthwith placed under martial law, and so remained until the army departed in November, 1783. During those seven years New York was not altogether a comfortable place in which to live. After 1783 the city government remained as before, except that the state of New York assumed the control formerly exercised by the British Crown. Mayor and recorder, town-clerk and sheriff, were now appointed by a council of appointment consisting of the governor and four senators. This did not work well, and the constitution of 1821 gave to the people the power of choosing their sheriff and town-clerk, while the mayor was to be elected by the common council. Nothing but the appointment of the recorder remained in the hands of the governor. Thus nearly forty years after the close of the War of Independence the city of New York acquired self-government as complete as that of the city of London. In 1857, as we shall see, this self-government was greatly curtailed, with results more or less disastrous.

The next city governments to be organized in the American colonies, after that of New

[1] Especially in the so-called Montgomerie charter of 1730.

York, were those of Philadelphia, incorporated in 1701, and Annapolis, incorporated in 1708. These governments were framed after the wretched pattern then so common in England. In both cases the mayor, the recorder, the aldermen, and the common council constituted a close self-electing corporation. The resulting abuses were not so great as in England, probably because the cities were so small. But in course of time, especially in Philadelphia as it increased in population, the viciousness of the system was abundantly illustrated. As the people could not elect the governing corporation or any of its members, they very naturally and reasonably distrusted it, and through the legislature they contrived so to limit its powers of taxation that it was really unable to keep the streets in repair, to light them at night, or to support an adequate police force. An attempt was made to supply such wants by creating divers independent boards of commissioners, one for paving and draining, another for street-lamps and watchmen, a third for town-pumps, and so on. In this way responsibility got so minutely parcelled out and scattered, and there was so much jealousy and wrangling between the different boards and the corporation, that the result was chaos. The public money was habitually wasted and occasionally embezzled, and there was general dissatisfaction. In

City government in Philadelphia (1701–1789)

1789 the close corporation was abolished, and thereafter the aldermen and common council were elected by the citizens, the mayor was chosen by the aldermen out of their own number, and the recorder was appointed by the mayor and aldermen. Thus Philadelphia obtained a representative government.

These instances of New York and Philadelphia sufficiently illustrate the beginnings of city government in the United States. In each case the system was copied from England at a time when city government in England was sadly demoralized. What was copied was not the free republic of London, with its noble traditions of civic honour and sagacious public spirit, but the imperfect republics or oligarchies into which the lesser English boroughs were sinking, amid the foul political intrigues and corruption which characterized the Stuart period. The government of American cities in our own time is admitted on all hands to be far from satisfactory. It is interesting to observe that the cities which had municipal government before the Revolution, though they have always had their full share of able and high-minded citizens, do not possess even the tradition of good government. And the difficulty, in those colonial times, was plainly want of adequate self-government, want of responsibility on the part of

Traditions of good government lacking

the public servants toward their employers the people.

§ 3. *The Government of Cities in the United States.*

At the present day American municipal governments are for the most part constructed on the same general plan, though with many variations in detail. There is an executive department, with the mayor at its head. The mayor is elected by the voters of the city, and holds office generally for one year, but sometimes for two or three years, and in a few cities, notably St. Louis and Phildelphia, even for four years. Under the mayor are various heads of departments, — street commissioners, assessors, overseers of the poor, etc., — sometimes elected by the citizens, sometimes appointed by the mayor or the city council. This city council is a legislative body, usually consisting of two chambers, the aldermen and the common council, elected by the citizens; but in many small cities, and a few of the largest, such as Chicago and San Francisco, there is but one such chamber. Then there are city judges, sometimes appointed by the governor of the state, to serve for life or during good behaviour, but usually elected by the citizens for short terms.

Several features of our city governments

All appropriations of money for city purposes are made by the city council; and as a

general rule this council has some control over the heads of executive departments, which it exercises through committees. Thus there may be a committee upon streets, upon public buildings, upon parks or almshouses or whatever the municipal government is concerned with. The head of a department is more or less dependent upon his committee, and in practice this is found to divide and weaken responsibility. The heads of departments are apt to be independent of one another, and to owe no allegiance in common to any one. The mayor, when he appoints them, usually does so subject to the approval of the city council or of one branch of it. The mayor is usually not a member of the city council, but can veto its enactments, which however can be passed over his veto by a two thirds majority.

City governments thus constituted are something like state governments in miniature. The relation of the mayor to the city council is somewhat like that of the governor to the state legislature, and of the president to the national congress. In theory nothing could well be more republican, or more unlike such city governments as those of New York and Philadelphia before the Revolution. Yet in practice it does not seem to work well. New York and Philadelphia seem to have heard as many complaints in the nineteenth

They do not seem to work well

century as in the eighteenth, and the same kind of complaints, — of excessive taxation, public money wasted or embezzled, ill-paved and dirty streets, inefficient police, and so on to the end of the chapter. In most of our large cities similar evils have been witnessed, and in too many of the smaller ones the trouble seems to be the same in kind, only less in degree. Our republican government, which, after making all due allowances, seems to work remarkably well in rural districts, and in the states, and in the nation, has certainly been far less successful as applied to cities. Accordingly our cities have come to furnish topics for reflection to which writers and orators fond of boasting the unapproachable excellence of American institutions do not like to allude. Fifty years ago we were wont to speak of civil government in the United States as if it had dropped from heaven or had been specially created by some kind of miracle upon American soil; and we were apt to think that in mere republican forms there was some kind of mystic virtue which made them a panacea for all political evils. Our later experience with cities has rudely disturbed this too confident frame of mind. It has furnished facts which do not seem to fit our self-complacent theory, so that now our writers and speakers are inclined to vent their spleen upon the unhappy cities, perhaps too unreservedly. We

hear them called "foul sinks of corruption" and "plague spots on our body politic." Yet in all probability our cities are destined to increase in number and to grow larger and larger; so that perhaps it is just as well to consider them calmly, as presenting problems which had not been thought of when our general theory of government was first worked out a hundred years ago, but which, after we have been sufficiently taught by experience, we may hope to succeed in solving, just as we have heretofore succeeded in other things. A general discussion of the subject does not fall within the province of this brief historical sketch. But our account would be very incomplete if we were to stop short of mentioning some of the recent attempts that have been made toward reconstructing our theories of city government and improving its practical working. And first, let us point out a few of the peculiar difficulties of the problem, that we may see why we might have been expected, up to the present time, to have been less successful in managing our great cities than in managing our rural communities, and our states, and our nation.

Some difficulties to be stated

In the first place, the problem is comparatively new and has taken us unawares. At the time of Washington's inauguration to the presidency there were no large cities in the United

States. Philadelphia had a population of 42,000; New York had 33,000; Boston, which came next, with 18,000, was not yet a city. Then came Baltimore, with 13,000; while Brooklyn was a village of 1,600 souls. Now these cities have a population of over 6,000,000, or much more than that of the United States in 1789. And consider how rapidly new cities have been added to the list. One hardly needs to mention the most striking cases, such as Chicago, with 4,000 inhabitants in 1840, and more than 1,800,000 in 1900; or Denver, with its miles of handsome streets and shops, and not one native inhabitant who has reached his fortieth birthday. Such facts are summed up in the general statement that, whereas in 1790 the population of the United States was scarcely 4,000,000, and out of each 100 inhabitants only 3 dwelt in cities and the other 97 in rural places; on the other hand in 1880, when the population was more than 50,000,000, out of each 100 inhabitants 23 dwelt in cities and 77 in rural places. But duly to appreciate the rapidity of this growth of cities, we must observe that most of it has been subsequent to 1840. In 1790 there were six towns in the United States that might be ranked as cities from their size, though to get this number we must include Boston. In 1800 the number was the same. By 1810 the number had risen

Rapid growth of American cities

from 6 to 11; by 1820 it had reached 13; by 1830 this thirteen had doubled and become 26; and in 1840 there were 44 cities altogether. The urban population increased from 210,873 in 1800 to 1,453,994 in 1840. But between 1840 and 1880 the number of new cities which came into existence was 242, and the urban population increased to 11,318,547. Nothing like this was ever known before in any part of the world, and perhaps it is not strange that such a tremendous development did not find our methods of government fully prepared to deal with it.

Some consequences of this rapid growth

This rapidity of growth has entailed some important consequences. In the first place it obliges the city to make great outlays of money in order to get immediate results. Public works must be undertaken with a view to quickness rather than thoroughness. Pavements, sewers, and reservoirs of some sort must be had at once, even if inadequately planned and imperfectly constructed; and so, before a great while, the work must be done over again. Such conditions of imperative haste increase the temptations to dishonesty as well as the liability to errors of judgment on the part of the men who administer the public funds.[1] Then the rapid growth

[1] This and some of the following considerations have been ably set forth and illustrated by Hon. Seth Low, lately presi-

of a city, especially of a new city, requiring the immediate construction of a certain amount of public works, almost necessitates the borrowing of money, and debt means heavy taxes. It is like the case of a young man who, in order to secure a home for his quickly growing family, buys a house under a heavy mortgage. Twice a year there comes in a great bill for interest, and in order to meet it he must economize in his table or now and then deny himself a new suit of clothes. So if a city has to tax heavily to pay its debts, it must cut down its current expenses somewhere, and the results are sure to be visible in more or less untidiness and inefficiency. Mr. Low tells us that "very few of our American cities have yet paid in full the cost of their original water-works." Lastly, much wastefulness results from want of foresight. It is not easy to predict how a city will grow, or the nature of its needs a few years hence. Moreover, even when it is easy enough to predict a result, it is not easy to secure practical foresight on the part of a city council elected for the current year. Its members are afraid of making taxes too heavy this year, and considerations of ten years hence are apt to be dismissed as "visionary." It is always

Want of practical foresight

dent of Columbia College, now mayor of New York, in an address at Johns Hopkins University, published in J. H. U. Studies, *Supplementary Notes*, No. 4.

hard for us to realize how terribly soon ten years hence will be here. The habit of doing things by halves has been often commented on (and, perhaps, even more by our own writers than by foreigners) as especially noticeable in America. It has doubtless been fostered by the conditions which in so many cases have made it absolutely necessary to adopt temporary makeshifts. These conditions have produced a certain habit of mind.

Growth in complexity of government in cities

Let us now observe that as cities increase in size the amount of government that is necessary tends in some respects to increase. Wherever there is a crowd there is likely to be some need of rules and regulations. In the country a man may build his house pretty much as he pleases; but in the city he may be forbidden to build it of wood, and perhaps even the thickness of the party walls or the position of the chimneys may come in for some supervision on the part of the government. For further precaution against spreading fires, the city has an organized force of men, with costly engines, engine-houses, and stables. In the country a board of health has comparatively little to do; in the city it is often confronted with difficult sanitary problems which call for highly paid professional skill on the part of physicians and chemists, architects and plumbers, masons and engineers. So, too, the water

supply of a great city is likely to be a complicated business, and the police force may well need as much management as a small army. In short, with a city, increase in size is sure to involve increase in complexity of organization, and this means a vast increase in the number of officials for doing the work and of details to be superintended. For example, let us enumerate the executive department and officers of the city of Boston at the present time.

Municipal officers in Boston

There are three street commissioners with power to lay out streets and assess damages thereby occasioned. These are elected by the people. The following officers are appointed by the mayor, with the concurrence of the aldermen: a superintendent of streets, an inspector of buildings, three commissioners each for the fire and health departments, four overseers of the poor, besides a board of nine directors for the management of almshouses, houses of correction, lunatic hospital, etc.; a city hospital board of five members, five trustees of the public library, three commissioners each for parks and water-works; five chief assessors, to estimate the value of property and assess city, county, and state taxes; a city collector, a superindendent of public buildings, five trustees of Mount Hope Cemetery, six sinking fund commissioners, two record commissioners, three registrars of voters, a registrar

of births, deaths, and marriages, a city treasurer, city auditor, city solicitor, corporation counsel, city architect, city surveyor, superintendent of Faneuil Hall Market, superintendent of street lights, superintendent of sewers, superintendent of printing, superintendent of bridges, five directors of ferries, harbour master and ten assistants, water registrar, inspector of provisions, inspector of milk and vinegar, a sealer and four deputy sealers of weights and measures, an inspector of lime, three inspectors of petroleum, fifteen inspectors of pressed hay, a culler of hoops and staves, three fence-viewers, ten field-drivers and pound-keepers, three surveyors of marble, nine superintendents of hay scales, four measurers of upper leather, fifteen measurers of wood and bark, twenty measurers of grain, three weighers of beef, thirty-eight weighers of coal, five weighers of boilers and heavy machinery, four weighers of ballast and lighters, ninety-two undertakers, 150 constables, 968 election officers, and their deputies. A few of these officials serve without pay, some are paid by salaries fixed by the council, some by fees. Besides these there is a clerk of the common council elected by that body, and also the city clerk, city messenger, and clerk of committees, in whose election both branches of the city council concur. The school committee, of twenty-four members, elected by the people, is distinct from the rest of the city

government, and so is the board of police, composed of three commissioners appointed by the state executive.[1]

This long list may serve to give some idea of the mere quantity of administrative work required in a large city. Obviously under such circumstances city government must become more or less of a mystery to the great mass of citizens. They cannot watch its operations as the inhabitants of a small village can watch the proceedings of their township and county governments. Much work must go on which cannot even be intelligently criticised without such special knowledge as it would be idle to expect in the average voter, or perhaps in any voter. It becomes exceedingly difficult for the taxpayer to understand just what his money goes for, or how far the city expenses might reasonably be reduced; and it becomes correspondingly easy for municipal corruption to start and acquire a considerable headway before it can be detected and checked. In some respects city government is harder to watch intelligently than the government of the state or of the nation. For these wider governments are to some extent limited to work of general supervision. As compared with the

How city government comes to be a mystery

In some respects it is more of a mystery than state and national government

[1] Bugbee, *The City Government of Boston*, J. H. U. Studies, V., iii.

city, they are more concerned with the establishment and enforcement of certain general principles, and less with the administration of endlessly complicated details. I do not mean to be understood as saying that there is not plenty of intricate detail about state and national governments. I am only comparing one thing with another, and it seems to me that one chief difficulty with city government is the bewildering vastness and multifariousness of the details with which it is concerned. The modern city has come to be a huge corporation for carrying on a huge business with many branches, most of which call for special aptitude and training.

The mayor at first had too little power

As these points have gradually forced themselves upon public attention there has been a tendency in many of our large cities toward remodelling their governments on new principles. The most noticeable feature of this tendency is the increase in the powers of the mayor. A hundred years ago our legislators and constitution-makers were much afraid of what was called the "one-man power." In nearly all the colonies a chronic quarrel had been kept up between the governors appointed by the king and the legislators elected by the people, and this had made the "one-man power" very unpopular. Besides, it was something that had been unpopular in ancient Greece and Rome, and it was thought to

be essentially unrepublican in principle. Accordingly our great-grandfathers preferred to entrust executive powers to committees rather than to single individuals; and when they assigned an important office to an individual they usually took pains to curtail its power and influence. This disposition was visible in our early attempts to organize city governments like little republics. First, in the board of aldermen and the common council we had a two-chambered legislature. Then, lest the mayor should become dangerous, the veto power was at first generally withheld from him, and his appointments of executive officers needed to be confirmed by at least one branch of the city council. These executive officers, moreover, as already observed, were subject to more or less control or oversight from committees of the city council.

Now this system, in depriving the mayor of power, deprived him of responsibility, and left the responsibility nowhere in particular. In making appointments the mayor and council would come to some sort of compromise with each other and exchange favours. Perhaps for private reasons incompetent or dishonest officers would get appointed, and if the citizens ventured to complain the mayor would say that he appointed as good men as the council could be induced to confirm, and the council would declare their

Scattering and weakening of responsibility

willingness to confirm good appointments if the mayor could only be persuaded to make them.

Then the want of subordination of the different executive departments made it impossible to secure unity of administration or to carry out any consistent and generally intelligible policy. Between the various executive officers and visiting committees there was apt to be a more or less extensive interchange of favours, or what is called "log-rolling;" and sums of money would be voted by the council only thus to leak away in undertakings the propriety or necessity of which was perhaps hard to determine. There was no responsible head who could be quickly and sharply called to account. Each official's hands were so tied that whatever went wrong he could declare that it was not his fault. The confusion was enhanced by the practice of giving executive work to committees or boards instead of single officers. Benjamin Franklin used to say, If you wish to be sure that a thing is done, go and do it yourself. Human experience certainly proves that this is the only absolutely safe way. The next best way is to send some competent person to do it for you; and if there is no one competent to be had, you do the next best thing and entrust the work to the least incompetent person you can find. If you

Committees inefficient for executive purposes

entrust it to a committee your prospect of getting it done is diminished, and it grows less if you enlarge your committee. By the time you have got a group of committees, independent of one another and working at cross purposes, you have got Dickens's famous Circumlocution Office, where the great object in life was "how not to do it."

Amid the general dissatisfaction over the extravagance and inefficiency of our city governments, people's attention was first drawn to the rapid and alarming increase of city indebtedness in various parts of the country. A heavy debt may ruin a city as surely as an individual, for it raises the rate of taxation, and thus, as was above pointed out, it tends to frighten people and capital away from the city. At first it was sought to curb the recklessness of city councils in incurring lavish expenditures by giving the mayor a veto power. Laws were also passed limiting the amount of debt which a city would be allowed to incur under any circumstances. Clothing the mayor with the veto power is now seen to have been a wise step; and arbitrary limitation of the amount of debt, though a clumsy expedient, is confessedly a necessary one. But beyond this, it was in some instances attempted to take the management of some departments of city business out of the hands of the city and put them

Increase of city debts

into the hands of the state legislature. The most notable instance of this was in New York in 1857. The results, there and elsewhere, have been generally regarded as unsatisfactory. After a trial of thirty years the experience of New York has proved that a state legislature is not competent to take proper care of the government of cities. Its members do not know enough about the details of each locality, and consequently local affairs are left to the representatives from each locality, with "log-rolling" as the inevitable result. A man fresh from his farm on the edge of the Adirondacks knows nothing about the problems pertaining to electric wires in Broadway, or to rapid transit between Harlem and the Battery; and his consent to desired legislation on such points can very likely be obtained only by favouring some measure which he thinks will improve the value of his farm, or perhaps by helping him to debauch the civil service by getting some neighbour appointed to a position for which he is not qualified. All this is made worse by the fact that the members of a state government are generally less governed by a sense of responsibility toward the citizens of a particular city than even the worst local government that can be set up in such a city.[1]

Attempt to cure the evil by state interference; experience of New York

[1] It is not intended to deny that there may be instances in

Moreover, even if legislatures were otherwise competent to manage the local affairs of cities, they have not time enough, amid the pressure of other duties, to do justice to such matters. In 1870 the number of acts passed by the New York legislature was 808. Of these, 212, or more than one fourth of the whole, related to cities and villages. The 808 acts, when printed, filled about 2000 octavo pages; and of these the 212 acts filled more than 1500 pages. This illustrates what I said above about the vast quantity of details which have to be regulated in municipal government. Here we have more than three fourths of the volume of state-legislation devoted to local affairs; and it hardly need be added that a great part of these enactments were worse than worthless because they were made hastily and without due considera-

which the state government may advantageously participate in the government of cities. It may be urged that, in the case of great cities, like New York or Boston, many people who are not residents either do business in the city or have vast business interests there, and thus may be as deeply interested in its welfare as any of the voters. It may also be said that state provisions for city government do not always work badly. There are many competent judges who approve of the appointment of police commissioners by the executive of Massachusetts. There are generally two sides to a question; and to push a doctrine to extremes is to make oneself a *doctrinaire* rather than a wise citizen. But experience clearly shows that in all doubtful cases it is safer to let the balance incline in favour of local self-government than the other way.

tion, — though not always, perhaps, without what lawyers call *a* consideration.[1]

The experience of New York thus proved that state intervention and special legislation did not mend matters. It did not prevent the shameful rule of the Tweed Ring from 1868 to 1871, when a small band of conspirators got themselves elected or appointed to the principal city offices, and, having had their own corrupt creatures chosen judges of the city courts, proceeded to rob the taxpayers at their leisure. By the time they were discovered and brought to justice, their stealings amounted to many millions of dollars,

Tweed Ring in New York

[1] Nothing could be further from my thought than to cast any special imputation upon the New York legislature, which is probably a fair average specimen of law-making bodies. The theory of legislative bodies, as laid down in text-books, is that they are assembled for the purpose of enacting laws for the welfare of the community in general. In point of fact they seldom rise to such a lofty height of disinterestedness. Legislation is usually a mad scramble in which the final result, be it good or bad, gets evolved out of compromises and bargains among a swarm of clashing local and personal interests. The "consideration" may be anything from log-rolling to bribery. In American legislatures it is to be hoped that downright bribery is rare. As for log-rolling, or exchange of favours, there are many phases of it in which that which may be perfectly innocent shades off by almost imperceptible degrees into that which is unseemly or dishonourable or even criminal; and it is in this hazy region that Satan likes to set his traps for the unwary pilgrim.

and the rate of taxation had risen to more than two per cent.

The discovery of these wholesale robberies, and of other villainies on a smaller scale in other cities, has led to much discussion of the problems of municipal government, and to many attempts at practical reform. The present is especially a period of experiments, yet in these experiments perhaps a general drift of opinion may be discerned. People seem to be coming to regard cities more as if they were huge business corporations than as if they were little republics. The lesson has been learned that in executive matters too much limitation of power entails destruction of responsibility; the "ring" is now more dreaded than the "one-man power;" and there is accordingly a manifest tendency to assail the evil by concentrating power and responsibility in the mayor.

New experiments

The first great city to adopt this method was Brooklyn.[1] In the first place the city council was simplified and made a one-chambered council consisting of nineteen aldermen. Besides this council of aldermen, the people elect only three city officers, — the mayor, comptroller, and auditor. The comptroller is the principal finance officer

New government of Brooklyn

[1] When Brooklyn was a municipality within itself, and before its consolidation with New York.

and book-keeper of the city; and the auditor must approve bills against the city, whether great or small, before they can be paid. The mayor appoints, without confirmation by the council, all executive heads of departments; and these executive heads are individuals, not boards. Thus there is a single police commissioner, a single fire commissioner, a single health commissioner, and so on; and each of these heads appoints his own subordinates; "so that the principle of defined responsibility permeates the city government from top to bottom."[1] In a few cases, where the work to be done is rather discretionary than executive in character, it is entrusted to a board; thus there is a board of assessors, a board of education, and a board of elections. These are all appointed by the mayor, but for terms not coinciding with his own; "so that, in most cases, no mayor would appoint the whole of any such board unless he were to be twice elected by the people." But the executive officers are appointed by the mayor for terms coincident with his own, that is, for two years. "The mayor is elected at the general election in November; he takes office on the first of January following, and for one month the great departments of the city are carried on for him by the appointees of his predecessor.

[1] Seth Low on "Municipal Government," in Bryce's *American Commonwealth*, vol. i. p. 626.

On the first of February it becomes his duty to appoint his own heads of departments," and thus " each incoming mayor has the opportunity to make an administration in all its parts in sympathy with himself."

With all these immense executive powers entrusted to the mayor, however, he does not hold the purse-strings. He is a member of a board of estimate, of which the other four members are the comptroller and auditor, with the county treasurer and supervisor. This board recommends the amounts to be raised by taxation for the ensuing year. These estimates are then laid before the council of aldermen, who may cut down single items as they see fit, but have not the power to increase any item. The mayor must see to it that the administrative work of the year does not use up more money than is thus allowed him.

This Brooklyn system has great merits. It ensures unity of administration, it encourages promptness and economy, it locates and defines responsibility, and it is so simple that everybody can understand it. The people, having but few officers to elect, are more likely to know something about them. Especially since everybody understands that the success of the government depends upon the character of the mayor, extraordinary pains are taken to secure good mayors ; and the increased

Some of its merits

interest in city politics is shown by the fact that in Brooklyn more people vote for mayor than for governor or for president. Fifty years ago such a reduction in the number of elective officers would have greatly shocked all good Americans. But in point of fact, while in small townships where everybody knows everybody popular control is best ensured by electing all public officers, it is very different in great cities where it is impossible that the voters in general should know much about the qualifications of a long list of candidates. In such cases citizens are apt to vote blindly for names about which they know nothing except that they occur on a Republican or a Democratic ticket; although, if the object of a municipal election is simply to secure an upright and efficient municipal government, to elect a city magistrate because he is a Republican or a Democrat is about as sensible as to elect him because he believes in homœopathy or has a taste for chrysanthemums.[1] To vote for candidates whom one has

[1] Of course from the point of view of the party politician, it is quite different. Each party has its elaborate "machine" for electing state and national officers; and in order to be kept at its maximum of efficiency the machine must be kept at work on all occasions, whether such occasions are properly concerned with differences in party politics or not. To the party politician it of course makes a great difference whether a city magistrate is a Republican or a Democrat. To him even the political complexion of his mail-carrier is a matter of im-

never heard of is not to insure popular control, but to endanger it. It is much better to vote for one man whose reputation we know, and then to hold him strictly responsible for the appointments he makes. The Brooklyn system seems to be a step toward lifting city government out of the mire of party politics.

This system went into operation in Brooklyn in January, 1882, and seems to have given general satisfaction. Since then changes in a similar direction, though with variations in detail, have been made in other cities, and notably in Philadelphia.

In speaking of the difficulties which beset city government in the United States, mention is often (and perhaps too exclusively) made of the great mass of ignorant voters, chiefly foreigners without experience in self-government, with no comprehension of American principles and traditions, and with little or no property to suffer from excessive taxation. Such people will naturally have slight compunctions about voting away other people's money; indeed, they are apt to think

Notion that the suffrage ought to be restricted

portance. But these illustrations only show that party politics may be carried to extremes that are inconsistent with the best interests of the community. Once in a while it becomes necessary to teach party organizations to know their place, and to remind them that they are not the lords and masters but the servants and instruments of the people.

that "the Government" has got Aladdin's lamp hidden away somewhere in a burglar-proof safe, and could do pretty much everything that is wanted, if it only would. In the hands of demagogues such people may be dangerous; they are supposed to be especially accessible to humbug and bribes, and their votes have no doubt been used to sustain and perpetuate most flagrant abuses. We often hear it said that the only way to get good government is to deprive such people of their votes and limit the suffrage to persons who have some property at stake. Such a measure has been seriously recommended in New York, but it is generally felt to be impossible without a revolution.

Perhaps, after all, it may not be so desirable as it seems. The ignorant vote has done a great deal of harm, but not all the harm. In 1878 it was reported by the Pennsylvania Municipal Commission, "as a remarkable but notorious fact, that the accumulations of debt in Philadelphia and other cities of the state have been due, not to a non-property-holding, irresponsible element among the electors, but to the desire for speculation among the property-owners themselves. Large tracts of land outside the built-up portion of the city have been purchased, combinations made among men of wealth, and councils besieged until they have been driven into making

Testimony of Pennsylvania Municipal Commission

appropriations to open and improve streets and avenues, largely in advance of the real necessities of the city. Extraordinary as the statement may seem at first, the experience of the past shows clearly that frequently property-owners need more protection against themselves than against the non-property-holding class."[1] This is a statement of profound significance, and should be duly pondered by advocates of a restricted suffrage.

It should also be borne in mind that, while ignorant and needy voters, led by unscrupulous demagogues, are capable of doing much harm with their votes, it is by no means clear that the evil would be removed by depriving them of the suffrage. It is very unsafe to have in any community a large class of people who feel that political rights or privileges are withheld from them by other people who are their superiors in wealth or knowledge. Such poor people are apt to have exaggerated ideas of what a vote can do; very likely they think it is because they do not have votes that they are poor; thus they are ready to entertain revolutionary or anarchical ideas, and are likely to be more dangerous material in the hands of demagogues than if they were allowed to vote. Universal suffrage has

Dangers of a restricted suffrage

[1] Allinson and Penrose, *Philadelphia, 1681–1887; a History of Municipal Development*, p. 278.

its evils, but it undoubtedly acts as a safety-valve. The only cure for the evils which come from ignorance and shiftlessness is the abolition of ignorance and shiftlessness; and this is slow work. Church and school here find enough to keep them busy; but the vote itself, even if often misused, is a powerful educator; and we need not regret that the restriction of the suffrage has come to be practically impossible.

The purification of our city governments will never be completed until they are entirely divorced from national party politics. The connection opens a limitless field for "log-rolling," and rivets upon cities the "spoils system," which is always and everywhere incompatible with good government. It is worthy of note that the degradation of so many English boroughs and cities during the Tudor and Stuart periods was chiefly due to the encroachment of national politics upon municipal politics. Because the borough returned members to the House of Commons, it became worth while for the Crown to intrigue with the municipal government, with the ultimate object of influencing parliamentary elections. The melancholy history of the consequent dickering and dealing, jobbery and robbery, down to 1835, when the great Municipal Corporations Act swept it all

Baneful effects of mixing city politics with national politics

away, may be read with profit by all Americans.[1] It was the city of London only, whose power and independence had kept it free from complications with national politics, that avoided the abuses elsewhere prevalent, so that it was excepted from the provisions of the Act of 1835, and still retains its ancient constitution.

In the United States the entanglement of municipal with national politics has begun to be regarded as mischievous and possibly dangerous, and attempts have in some cases been made toward checking it by changing the days of election, so that municipal officers may not be chosen at the same time with presidential electors. Such a change is desirable, but to obtain a thoroughly satisfactory result, it will be necessary to destroy the "spoils system" root and branch, and to adopt effective measures of ballot reform. To these topics I shall recur when treating of our national government. But first we shall have to consider the development of our several states.

[1] See *Parliamentary Reports*, 1835, "Municipal Corporations Commission;" also Sir Erskine May, *Const. Hist.*, vol. ii. chap. xv.

VI

THE STATE

§ 1. *The Colonial Governments.*

IN the year 1600 Spain was the only European nation which had obtained a foothold upon the part of North America now comprised within the United States. Spain claimed the whole continent on the strength of the bulls of 1493 and 1494, in which Pope Alexander VI. granted her all countries to be discovered to the west of a certain meridian which happens to pass a little to the east of Newfoundland. From their first centre in the West Indies the Spaniards had made a lodgment in Florida, at St. Augustine, in 1565; and from Mexico they had in 1605 founded Santa Fé, in what is now the territory of New Mexico.

Claims of Spain to the possession of North America

France and England, however, paid little heed to the claim of Spain. France had her own claim to North America, based on the voyages of discovery made by Verrazano in 1524 and Cartier in 1534, in the course of which New York harbour had been visited and the St. Lawrence partly explored.

Claims of France and England

England had a still earlier claim, based on the discovery of the North American continent in 1497 by John Cabot. It presently became apparent that to make such claims of any value, discovery must be followed up by occupation of the country. Attempts at colonization had been made by French Protestants in Florida in 1562–65, and by the English in North Carolina in 1584–87, but both attempts had failed miserably. Throughout the sixteenth century French and English sailors kept visiting the Newfoundland fisheries, and by the end of the century the French and English governments had their attention definitely turned to the founding of colonies in North America.

In 1606 two great joint-stock companies were formed in England for the purpose of planting such colonies. One of these companies had its headquarters at London, and was called the London Company; the other had its headquarters at the seaport of Plymouth, in Devonshire, and was called the Plymouth Company. To the London Company the king granted the coast of North America from 34° to 38° north latitude; that is, about from Cape Fear to the mouth of the Rappahannock. To the Plymouth Company he granted the coast from 41° to 45°; that is, about from the mouth of the Hudson to the eastern extremity of Maine. These grants were

The London and Plymouth Companies

to go in straight strips or zones across the continent from the Atlantic Ocean to the Pacific. Almost nothing was then known about American geography; the distance from ocean to ocean across Mexico was not so very great, and people did not realize that further north it was quite a different thing. As to the middle strip, starting from the coast between the Rappahannock and the Hudson, it was open to the two companies, with the understanding that neither was to plant a colony within 100 miles of any settlement already begun by the other. This meant practically that it was likely to be controlled by whichever company should first come into the field with a flourishing colony. Accordingly both companies made haste and sent out settlers in 1607, the one to the James River, the other to the Kennebec. The first enterprise, after much suffering, resulted in the founding of Virginia; the second ended in disaster, and it was not until 1620 that the Pilgrims from Leyden made the beginnings of a permanent settlement upon the territory of the Plymouth Company.

Their common charter

These two companies were at first organized under a single charter. Each was to be governed by a council in England appointed by the king, and these councils were to appoint councils of thirteen to reside in the colonies, with powers practically un-

limited. Nevertheless the king covenanted with his colonists as follows: "Also we do, for us, our heirs and successors, declare by these presents that all and every the persons, being our subjects, which shall go and inhabit within the said colony and plantation, and every their children and posterity, which shall happen to be born within any of the limits thereof, shall have and enjoy all liberties, franchises, and immunities of free denizens and natural subjects within any of our other dominions, to all intents and purposes as if they had been abiding and born within this our realm of England, or in any other of our dominions." This principle, that British subjects born in America should be entitled to the same political freedom as if born in England, was one upon which the colonists always insisted, and it was the repeated and persistent attempts of George III. to infringe it that led the American colonies to revolt and declare themselves independent of Great Britain.

Both the companies founded in 1606 were short-lived. In 1620 the Plymouth Company got a new charter, which made it independent of the London Company. In 1624 the king, James I., quarrelled with the London Company, brought suit against it in court, and obtained from the subservient judges a decree annulling its charter. In 1635 the reorganized Plymouth Company sur-

Dissolution of the two companies

rendered its charter to Charles I. in pursuance of a bargain which need not here concern us.[1] But the creation of these short-lived companies left an abiding impression upon the map of North America and upon the organization of civil government in the United States. Let us observe what was done with the three strips or zones into which the country was divided: the northern or New England zone, assigned to the Plymouth Company; the southern or Virginia zone, assigned to the London Company; and the central zone, for which the two companies were, so to speak, to run a race.

Settlement of the three zones

In the northern zone the colonies of Plymouth and Massachusetts Bay were founded by emigration from England between 1620 and 1630; and then in 1633–38 Connecticut, Providence, and Rhode Island were founded by emigration from Massachusetts. Presently, in 1643, Providence and Rhode Island voluntarily united into one commonwealth; and in 1662 New Haven, originally founded in 1637 by emigration from England, was annexed to Connecticut by Charles II. Certain towns along the northeast coast, founded under royal grants to individual proprietors, were for some time practically a part of Massachusetts, but in 1679 a part of this region

1. The northern zone

[1] See my *Beginnings of New England*, p. 137.

was erected by Charles II. into the royal province of New Hampshire. The remainder, under the name of Maine, was in 1692 confirmed to Massachusetts, to which Plymouth was at the same time annexed. Thus, before the Revolution, four of the original thirteen states — Massachusetts, Connecticut, Rhode Island, and New Hampshire — had been constituted in the northern zone.

In 1663 Charles II. cut off the southern part of Virginia, the area covering the present states of North and South Carolina and Georgia, and it was formed into a new province called Carolina. In 1729 the two groups of settlements which had grown up along its coast were definitively separated into North and South Carolina; and in 1732 the frontier portion toward Florida was organized into the colony of Georgia. Thus four of the original thirteen states — Virginia, the two Carolinas, and Georgia — were constituted in the southern zone.

2. The southern zone

To this group some writers add Maryland, founded in 1632, because its territory had been claimed by the London Company; but the earliest settlements in Maryland, its principal towns, and almost the whole of its territory, come north of latitude 38° and within the middle zone.

Between the years 1614 and 1621 the Dutch

founded their colony of New Netherland upon the territory included between the Hudson and Delaware rivers, or, as they quite naturally called them, the North and South rivers. They pushed their outposts up the Hudson as far as the site of Albany, thus intruding far into the northern zone. In 1638 Sweden planted a small colony upon the west side of Delaware Bay, but in 1655 it was surrendered to the Dutch. Then in 1664 the English took New Netherland from the Dutch, and Charles II. granted the province to his brother, the Duke of York. The duke proceeded to grant part of it to his friends, Berkeley and Carteret, and thus marked off the new colony of New Jersey. In 1681 the region west of New Jersey was granted to William Penn, and in the following year Penn bought from the Duke of York the small piece of territory upon which the Swedes had planted their colony. Delaware thus became an appendage to Penn's greater colony, but was never merged in it. Thus five of the original thirteen states — Maryland, New York, New Jersey, Pennsylvania, and Delaware — were constituted in the middle zone.

3. The middle zone

As we have already observed, the westward movement of population in the United States has largely followed the parallels of latitude, and thus the characteristics of these three origi-

nal strips or zones have, with more or less modification, extended westward. The men of New England, with their Portland and Salem reproduced more than 3000 miles distant in the state of Oregon, and within 100 miles of the Pacific Ocean, may be said in a certain sense to have realized literally the substance of King James's grant to the Plymouth Company. It will be noticed that the kinds of local government described in our earlier chapters are characteristic respectively of the three original zones: the township system being exemplified chiefly in the northern zone, the county system in the southern zone, and the mixed township-county system in the central zone.

The London and Plymouth companies did not perish until after state governments had been organized in the colonies already founded upon their territories. In 1619 the colonists of Virginia, with the aid of the more liberal spirits in the London Company, secured for themselves a representative government. To the governor and his council, appointed in England, there was added a general assembly composed of two burgesses from each "plantation,"[1] elected by

House of Burgesses in Virginia

[1] The word "plantation" is here used, not in its later and ordinary sense, as the estate belonging to an individual planter, but in an earlier sense. In this early usage it was equivalent to "settlement." It was used in New England

the inhabitants. This assembly, the first legislative body that ever sat in America, met on the 30th of July, 1619, in the choir of the rude church at Jamestown. The dignity of the burgesses was preserved, as in the House of Commons, by sitting with their hats on; and after offering prayer, and taking the oath of allegiance and supremacy, they proceeded to enact a number of laws relating to public worship, to agriculture, and to intercourse with the Indians. Curiously enough, so confident was the belief of the settlers that they were founding towns, that they called their representatives "burgesses," and down to 1776 the assembly continued to be known as the House of "Burgesses," although towns refused to grow in Virginia, and soon after counties were organized in 1634 the burgesses sat for counties. Such were the beginnings of representative government in Virginia.

The government of Massachusetts is descended from the Dorchester Company formed in England in 1623, for the ostensible purpose of trading in furs and timber and catching fish on the shores of Massachusetts Bay. After a disastrous beginning this company was dissolved, but only to be immediately reorganized on a greater scale. In 1628 a grant of the land

as well as in Virginia; thus Salem was spoken of by the court of assistants in 1629 as "New England's Plantation."

between the Charles and Merrimack rivers was obtained from the Plymouth Company; and in 1629 a charter was obtained from Charles I. So many men from the east of England had joined in the enterprise that it could no longer be fitly called a Dorchester Company. The new name was significantly taken from the New World. The charter created a corporation under the style of the Governor and Company of Massachusetts Bay in New England. The freemen of the Company were to hold a meeting four times a year; and they were empowered to choose a governor, a deputy governor, and a council of eighteen assistants, who were to hold their meetings each month. They could administer oaths of supremacy and allegiance, raise troops for the defence of their possessions, admit new associates into the Company, and make regulations for the management of their business, with the vague and weak proviso that in order to be valid their enactment must in no wise contravene the laws of England. Nothing was said as to the place where the Company should hold its meetings, and accordingly after a few months the Company transferred itself and its charter to New England, in order that it might carry out its intentions with as little interference as possible on the part of the Crown.

Company of Massachusetts Bay

Whether this transfer of the charter was legally justifiable or not is a question which has been much debated, but with which we need not here vex ourselves. The lawyers of the Company were shrewd enough to know that a loosely drawn instrument may be made to admit of great liberty of action. Under the guise of a mere trading corporation the Puritan leaders deliberately intended to found a civil commonwealth in accordance with their own theories of government.

After their arrival in Massachusetts, their numbers increased so rapidly that it became impossible to have a primary assembly of all the freemen, and so a representative assembly was devised after the model of the Old English county court. The representatives sat for townships, and were called deputies. At first they sat in the same chamber with the assistants, but in 1644 the legislative body was divided into two chambers, the deputies forming the lower house, while the upper was composed of the assistants, who were sometimes called magistrates. In elections the candidates for the upper house were put in nomination by the General Court and voted on by the freemen. In general the assistants represented the common or central power of the colony, while the deputies represented the interests of popular self-government.

Government of Massachusetts; the General Court

The former was comparatively an aristocratic and the latter a democratic body, and there were frequent disputes between the two.

It is worthy of note that the governing body thus constituted was at once a legislative and a judicial body, like the English county court which served as its model. Inferior courts were organized at an early date in Massachusetts, but the highest judicial tribunal was the legislature, which was known as the General Court. It still bears this name to-day, though it long ago ceased to exercise judicial functions.

Now as the freemen of Massachusetts directly chose their governor and deputy-governor, as well as their chamber of deputies, and also took part in choosing their council of assistants, their government was virtually that of an independent republic. The Crown could interpose no effective check upon its proceedings except by threatening to annul its charter and send over a viceroy who might be backed up, if need be, by military force. Such threats were sometimes openly made, but oftener hinted at. They served to make the Massachusetts government somewhat wary and circumspect, but they did not prevent it from pursuing a very independent policy in many respects, as when, for example, it persisted in allowing none but members of the Congregational church to vote. This measure, by which it was intended to

preserve the Puritan policy unchanged, was extremely distasteful to the British government. At length in 1684 the Massachusetts charter was annulled, an attempt was made to suppress town-meetings, and the colony was placed under a military viceroy, Sir Edmund Andros. After a brief period of despotic rule, the Revolution in England worked a change. In 1692 Massachusetts received a new charter, quite different from the old one. The people were allowed to elect representatives to the General Court, as before, but the governor and lieutenant-governor were appointed by the Crown, and all acts of the legislature were to be sent to England for royal approval. The general government of Massachusetts was thus, except for its possession of a charter, made similar to that of Virginia.

New charter of Massachusetts

The governments of Connecticut and Rhode Island were constructed upon the same general plan as the first government of Massachusetts. Governors, councils, and assemblies were elected by the people. These governments were made by the settlers themselves, after they had come out from Massachusetts; and through a very singular combination of circumstances,[1] they were confirmed by charters granted by Charles II. in 1662, soon after his return from exile. So

Connecticut and Rhode Island

[1] See my *Beginnings of New England*, pp. 245–249.

thoroughly republican were these governments that they remained without change until 1818 in Connecticut and until 1842 in Rhode Island.

We thus observe two kinds of state government in the American colonies. In both kinds the people choose a representative legislative assembly; but in the one kind they also choose their governor, while in the other kind the governor is appointed by the Crown. We have now to observe a third kind.

Counties palatine in England

After the downfall of the two great companies founded in 1606, the Crown had a way of handing over to its friends extensive tracts of land in America. In 1632 a charter granted by Charles I. to Cecilius Calvert, Lord Baltimore, founded the palatinate colony of Maryland. To understand the nature of this charter, we must observe that among the counties of England there were three whose rulers from an early time were allowed special privileges. Because Cheshire and Durham bordered upon the hostile countries, Wales and Scotland, and needed to be ever on the alert, their rulers, the earls of Chester and the bishops of Durham, were clothed with almost royal powers of command, and similar powers were afterwards granted through favouritism to the dukes of Lancaster. The three counties were called counties palatine (*i. e.* "palace counties").

Before 1600 the earldom of Chester and the duchy of Lancaster had been absorbed by the Crown, but the bishopric of Durham remained the type of an almost independent state, and the colony palatine of Maryland was modelled after it. The charter of Maryland conferred upon Lord Baltimore the most extensive privileges ever bestowed by the British Crown upon any subject. He "was made absolute lord of the land and water within his boundaries, could erect towns, cities, and ports, make war or peace, call the whole fighting population to arms and declare martial law, levy tolls and duties, establish courts of justice, appoint judges, magistrates, and other civil officers, execute the laws, and pardon offenders. He could erect manors, with courts-baron and courts-leet, and confer titles and dignities, so that they differed from those of England. He could make laws with the assent of the freemen of the province, and, in cases of emergency, ordinances not impairing life, limb, or property, without their assent. He could found churches and chapels, have them consecrated according to the ecclesiastical laws of England, and appoint the incumbents."[1] For his territory and these royal powers Lord Baltimore was to send over to the palace at Windsor a tribute of two Indian arrows

Charter of Maryland

[1] Browne's *Maryland: the History of a Palatinate*, p. 19.

yearly, and to reserve for the king one fifth part of such gold and silver as he might happen to get by mining. "The king furthermore bound himself and his successors to lay no taxes, customs, subsidies, or contributions whatever upon the people of the province, and in case of any such demand being made, the charter expressly declared that this clause might be pleaded as a discharge in full." Maryland was thus almost an independent state. Baltimore's title was Lord Proprietary of Maryland, and his title and powers were made hereditary in his family, so that he was virtually a feudal king. His rule, however, was effectually limited. The government of Maryland was carried on by a governor and a two-chambered legislature. The governor and the members of the upper house of the legislature were appointed by the lord proprietary, but the lower house of the legislature was elected, here as elsewhere, by the people; and in accordance with time-honoured English custom all taxation must originate in the lower house, which represented the people.

Half a century after the founding of Maryland, similar though somewhat less extensive proprietary powers were granted by Charles II. to William Penn, and under them the colony of Pennsylvania was founded and Delaware was purchased. Pennsylvania and Delaware had each its house of

Charter of Pennsylvania

representatives elected by the people; but there was only one governor and council for the two colonies. The governor and council were appointed by the lord proprietary, and as the council confined itself to advising the governor and did not take part in legislation, there was no upper house. The legislature was one-chambered. The office of lord proprietary was hereditary in the Penn family. For about eighty years the Penns and Calverts quarrelled, like true sovereigns, about the boundary-line between their principalities, until in 1763 the matter was finally settled. A line was agreed upon, and the survey was made by two distinguished mathematicians, Charles Mason and Jeremiah Dixon. The line ran westward 244 miles from the Delaware River, and every fifth milestone was engraved with the arms of Penn on the one side and those of Calvert on the other. In later times, after all the states north of Maryland had abolished slavery, Mason and Dixon's line became famous as the boundary between slave states and free states.

Mason and Dixon's line

At first there were other proprietary colonies besides those just mentioned, but in course of time the rights or powers of their lords proprietary were resumed by the Crown. When New Netherland was conquered from the Dutch it was granted to the duke of York as lord proprietary; but after

Other proprietary governments

one and twenty years the duke ascended the throne as James II., and so the part of the colony which he had kept became the royal province of New York. The part which he had sold to Berkeley and Carteret remained for a while the proprietary colony of New Jersey, sometimes under one government, sometimes divided between two; but the rule of the lords proprietary was very unpopular, and in 1702 their rights were surrendered to the Crown. The Carolinas and Georgia were also at first proprietary colonies, but after a while they willingly came under the direct sway of the Crown. In general the proprietary governments were unpopular because the lords proprietary, who usually lived in England and visited their colonies but seldom, were apt to regard their colonies simply as sources of personal income. This was not the case with William Penn, or the earlier Calverts, or with James Oglethorpe, the illustrious founder of Georgia; but it was too often the case. So long as the lord's rents, fees, and other emoluments were duly collected, he troubled himself very little as to what went on in the colony. If that had been all, the colony would have troubled itself very little about him. But the governor appointed by this absentee master was liable to be more devoted to his interests than to those of the people, and the civil service was seriously damaged by worthless

favourites sent over from England for whom the governor was expected to find some office that would pay them a salary. On the whole, it seemed less unsatisfactory to have the governors appointed by the Crown; and so before the Revolutionary War all the proprietary governments had fallen, except those of the Penns and the Calverts, which doubtless survived because they were the best organized and best administered.

At the time of the Revolution there were three forms of colonial government: 1. Republican, 2. Proprietary, 3. Royal

There were thus at the time of the Revolutionary War three forms of state government in the American colonies. There were, *first*, the Republican colonies, in which the governors were elected by the people, as in Rhode Island and Connecticut; *secondly*, the Proprietary colonies, in which the governors were appointed by hereditary proprietors, as in Maryland, Pennsylvania, and Delaware; *thirdly*, the Royal colonies,[1] in which the governors were appointed by the Crown, as in Georgia, the two Carolinas, Virginia, New Jersey, New York, Massachusetts, and New Hampshire. It is customary to distinguish the Republican colonies as *Charter*

[1] Or, as they were sometimes called, Royal *provinces*. In the history of Massachusetts many writers distinguish the period before 1692 as the *colonial* period, and the period 1692 to 1774 as the *provincial* period.

colonies, but that is not an accurate distinction, inasmuch as the Proprietary colonies also had charters. And among the Royal colonies, Massachusetts, having been originally a republic, still had a charter in which her rights were so defined as to place her in a somewhat different position from the other Royal colonies; so that Professor Alexander Johnston, with some reason, puts her in a class by herself as a *Semi-royal* colony.

These differences, it will be observed, related to the character and method of filling the governor's office. In the Republican colonies the governor naturally represented the interests of the people, in the Proprietary colonies he was the agent of the Penns or the Calverts, in the Royal colonies he was the agent of the king. All the thirteen colonies alike had a legislative assembly elected by the people. The basis of representation might be different in different colonies, as we have seen that in Massachusetts the delegates represented townships, whereas in Virginia they represented counties; but in all alike the assembly was a truly representative body, and in all alike it was the body that controlled the expenditure of public money. These representative assemblies arose spontaneously because the founders of the American colonies were Englishmen used from time im-

In all three forms there was a representative assembly, which alone could impose taxes

memorial to tax themselves and govern themselves. As they had been wont to vote for representatives in England, instead of leaving things to be controlled by the king, so now they voted for representatives in Maryland or New York, instead of leaving things to be controlled by the governor. The spontaneousness of all this is quaintly and forcibly expressed by the great Tory historian Hutchinson, who tells us that in the year 1619 a house of burgesses *broke out* in Virginia! as if it had been the mumps, or original sin, or any of those things that people cannot help having.

This representative assembly was the lower house in the colonial legislatures. The governor always had a council to advise with him and assist him in his executive duties, in imitation of the king's privy council in England. But in nearly all the colonies this council took part in the work of legislation, and thus sat as an upper house, with more or less power of reviewing and amending the acts of the assembly. In Pennsylvania, as already observed, the council refrained from this legislative work, and so, until some years after the Revolution, the Pennsylvania legislature was one-chambered. The members of the council were appointed in different ways, sometimes by the king or the lord proprietary, or, as in Massachusetts, by the out-

The governor's council was a kind of upper house

going legislature, or, as in Connecticut, they were elected by the people.

Thus all the colonies had a government framed after the model to which the people had been accustomed in England. It was like the English system in miniature, the governor answering to the king, and the legislature, usually two-chambered, answering to Parliament. And as quarrels between king and Parliament were not uncommon, so quarrels between governor and legislature were very frequent indeed, except in Connecticut and Rhode Island. The royal governors, representing British imperial ideas rather than American ideas, were sure to come into conflict with the popular assemblies, and sometimes became the objects of bitter popular hatred. The disputes were apt to be concerned with questions in which taxation was involved, such as the salaries of crown officers, the appropriations for war with the Indians, and so on. Such disputes bred more or less popular discontent, but the struggle did not become flagrant so long as the British Parliament refrained from meddling with it.

The colonial government was like the English system in miniature

The Americans never regarded Parliament as possessing any rightful authority over their internal affairs. When the earliest colonies were founded, it was the general theory that the American wilderness was part of the king's

private domain and not subject to the control of Parliament. This theory lived on in America, but died out in England. On the one hand the Americans had their own legislatures, which stood to them in the place of Parliament. The authority of Parliament was derived from the fact that it was a representative body, but it did not represent Americans. Accordingly the Americans held that the relation of each American colony to Great Britain was like the relation between England and Scotland in the seventeenth century. England and Scotland then had the same king, but separate Parliaments, and the English Parliament could not make laws for Scotland. Such is the connection between Sweden and Norway at the present day; they have the same king, but each country legislates for itself. So the American colonists held that Virginia, for example, and Great Britain had the same king, but each its independent legislature; and so with the other colonies, — there were thirteen parliaments in America, each as sovereign within its own sphere as the Parliament at Westminster, and the latter had no more right to tax the people of Massachusetts than the Massachusetts legislature had to tax the people of Virginia.

The Americans never admitted the supremacy of Parliament;

In one respect, however, the Americans did admit that Parliament had a general right of

supervision over all parts of the British empire. Maritime commerce seemed to be as much the affair of one part of the empire as another, and it seemed right that it should be regulated by the central Parliament at Westminster. Accordingly the Americans did not resist custom-house taxes as long as they seemed to be imposed for purely commercial purposes; but they were quick to resist direct taxation, and custom-house taxes likewise, as soon as these began to form a part of schemes for extending the authority of Parliament over the colonies.

except in the regulation of maritime commerce

In England, on the other hand, this theory that the Americans were subject to the king's authority but not to that of Parliament naturally became unintelligible after the king himself had become virtually subject to Parliament. The Stuart kings might call themselves kings by the grace of God, but since 1688 the sovereigns of Great Britain owe their seat upon the throne to an act of Parliament. To suppose that the king's American subjects were not amenable to the authority of Parliament seemed like supposing that a stream could rise higher than its source. Besides, after 1700 the British empire began to expand in all parts of the world, and the business of Parliament became more and more imperial. It could make laws

In England there grew up the theory of the imperial supremacy of Parliament

for the East India Company; why not, then, for the Company of Massachusetts Bay?

Thus the American theory of the situation was irreconcilable with the British theory, and when Parliament in 1765, with no unfriendly purpose, began laying taxes upon the Americans, thus invading the province of the colonial legislatures, the Americans refused to submit. The ensuing quarrel might doubtless have been peacefully adjusted, had not the king, George III., happened to be entertaining political schemes which were threatened with ruin if the Americans should get a fair hearing for their side of the case.[1] Thus political intrigue came in to make the situation hopeless. When a state of things arises, with which men's established methods of civil government are incompetent to deal, men fall back upon the primitive method which was in vogue before civil government began to exist. They fight it out; and so we had our Revolutionary War, and became separated politically from Great Britain. It is worthy of note, in this connection, that the last act of Parliament, which brought matters to a crisis, was the so-called Regulating Act of April, 1774, the purpose of which was to change the government of Massachusetts. This act pro-

Conflict between the British and the American theories was precipitated by George III.

[1] See my *War of Independence*, pp. 58–64, 69–71 (Riverside Library for Young People).

vided that members of the council should be appointed by the royal governor, that they should be paid by the Crown and thus be kept subservient to it, that the principal executive and judicial officers should be likewise paid by the Crown, and that town-meetings should be prohibited except for the sole purpose of electing town officers. Other unwarrantable acts were passed at the same time, but this was the worst. Troops were sent over to aid in enforcing this act, the people of Massachusetts refused to recognize its validity, and out of this political situation came the battles of Lexington and Bunker Hill.

§ 2. *The Transition from Colonial to State Governments.*

During the earlier part of the Revolutionary War most of the states had some kind of provisional government. The case of Massachusetts may serve as an illustration. There, as in the other colonies, the governor had the power of dissolving the assembly. This was like the king's power of dissolving Parliament in the days of the Stuarts. It was then a dangerous power. In modern England there is nothing dangerous in a dissolution of Parliament; on the contrary, it is a useful device for ascertaining the wishes of the people, for a new House of Commons must be

Dissolution of assemblies and Parliaments

elected immediately. But in old times the king would turn his Parliament out of doors, and as long as he could beg, borrow, or steal enough money to carry on government according to his own notions, he would not order a new election. Fortunately such periods were not very long. The latest instance was in the reign of Charles I., who got on without a Parliament from 1629 to 1640.[1] In the American colonies the dissolution of the assembly by the governor was not especially dangerous, but it sometimes made mischief by delaying needed legislation. During the few years preceding the Revolution, the assemblies were so often dissolved that it became necessary for the people to devise some new way of getting their representatives together to act for the colony. In Massachusetts this end was attained by the famous "Committees of Correspondence." No one could deny that town-meetings were legal, or that the people of one township had a right to ask advice from the people of another township. Accordingly each township appointed a committee to correspond or confer with committees from other townships. This system was

Committees of Correspondence

[1] The kings of France contrived to get along without a representative assembly from 1614 to 1789, and during this long period abuses so multiplied that the meeting of the States-General in 1789 precipitated the great revolution which overthrew the monarchy.

put into operation by Samuel Adams in 1772, and for the next two years the popular resistance to the Crown was organized by these committees. For example, before the tea was thrown into Boston harbour, the Boston committee sought and received advice from every township in Massachusetts, and the treatment of the tea-ships was from first to last directed by the committees of Boston and five neighbour towns.

In 1774 a further step was taken. As Parliament had overthrown the old government, and sent over General Gage as military governor, to put its new system into operation, the people defied and ignored Gage, and the townships elected delegates to meet together in what was called a "Provincial Congress." The president of this congress was the chief executive officer of the commonwealth, and there was a small executive council, known as the "Committee of Safety." Provincial Congress

This provisional government lasted about a year. In the summer of 1775 the people went further. They fell back upon their charter and proceeded to carry on their government as it had been carried on before 1774, except that the governor was left out altogether. The people in town-meeting elected their representatives to a general assembly, as of old, and this assembly chose a council of twenty-eight mem-

bers to sit as an upper house. The president of the council was the foremost executive officer of the commonwealth, but he had not the powers of a governor. He was no more the governor than the president of our Federal Senate is the President of the United States. The powers of the governor were really vested in the council, which was an executive as well as a legislative body, and the president was its chairman. Indeed, the title "president" is simply the Latin for "chairman," he who "presides" or "sits before" an assembly. In 1775 it was a more modest title than "governor," and had not the smack of semi-royalty which lingered about the latter. Governors had made so much trouble that people were distrustful of the office, and at first it was thought that the council would be quite sufficient for the executive work that was to be done. Several of the states thus organized their governments with a council at the head instead of a governor; and hence in reading about that period one often comes across the title "president," somewhat loosely used as if equivalent to governor. Thus in 1787 we find Benjamin Franklin called "president of Pennsylvania," meaning "president of the council of Pennsylvania." But this arrangement did not prove satisfactory and did not last long. It soon appeared that for executive work one man

Provisional governments; "governors" and "presidents"

is better than a group of men. In Massachusetts, in 1780, the old charter was replaced by a new written constitution, under which was formed the state government which, with some emendations in detail, has continued to the present day. Before the end of the eighteenth century all the states except Connecticut and Rhode Island, which had always been practically independent, thus remodelled their governments.

These changes, however, were very conservative. The old form of government was closely followed. First there was the governor, elected in some states by the legislature, in others by the people. Then there was the two-chambered legislature, of which the lower house was the same institution after the Revolution that it had been before. The upper house, or council, was retained, but in a somewhat altered form. The Americans had been used to having the acts of their popular assemblies reviewed by a council, and so they retained this revisory body as an upper house. But the fashion of copying names and titles from the ancient Roman republic was then prevalent, and accordingly the upper house was called a Senate. There was a higher property qualification for senators than for representatives, and generally their terms of service were longer. In some states they were chosen by the people, in others by the lower house. In Maryland they were

Origin of the Senates

chosen by a special college of electors, an arrangement which was copied in our federal government in the election of the President of the United States. In most of the states there was a lieutenant-governor, as there had been in the colonial period, to serve in case of the governor's death or incapacity; ordinarily the lieutenant-governor presided over the Senate.

Thus our state governments came to be repetitions on a small scale of the king, lords, and commons of England. The governor answered to the king, with his dignity very much curtailed by election for a short period. The Senate answered to the House of Lords except in being a representative and not a hereditary body. It was supposed to represent more especially that part of the community which was possessed of most wealth and consideration; and in several states the senators were apportioned with some reference to the amount of taxes paid by different parts of the state.[1] When New York made its senate a supreme court of appeal, it was in deliberate imitation of the House of Lords. On the other hand, the House of Representatives answered to the House of Commons as it used to be in the days when its power was really limited by that of the upper house and the king. At the present day the English House of

Likenesses and differences between British and American systems

[1] See my *Critical Period of American History*, chap. ii.

Commons is a supreme body. In case of a serious difference with the House of Lords, the upper house must yield, or else new peers will be created in sufficient number to reverse its vote; and the lords always yield before this point is reached. So, too, though the veto power of the sovereign has never been explicitly abolished, it has not been exercised since 1707, and would not now be tolerated for a moment. In America there is no such supreme body. The bill passed by the lower house may be thrown out by the upper house, or if it passes both it may be vetoed by the governor; and unless the bill can again pass both houses by more than a simple majority, the veto will stand. In most of the states a two-thirds vote in the affirmative is required.

§ 3. *The State Governments.*

During the present century our state governments have undergone more or less revision, chiefly in the way of abolishing property qualifications for office, making the suffrage universal, and electing officers that were formerly appointed. Only in Delaware does there still remain a property qualification for senators. There is no longer any distinction in principle between the upper and lower houses of the legislature. Both represent population, the usual difference being that the Sen-

Later modifications

ate consists of fewer members who represent larger districts. Usually, too, the term of the representatives is two years, and the whole house is elected at the same time, while the term of senators is four years, and half the number are elected every two years. This system of two-chambered legislatures is probably retained chiefly through a spirit of conservatism, because it is what we are used to. But it no doubt has real advantages in checking hasty legislation. People are always wanting to have laws made about all sorts of things, and in nine cases out of ten their laws would be pernicious laws; so that it is well not to have legislation made too easy.

The suffrage by which the legislature is elected is almost universal. It is given in all the states to all male *citizens* who have reached the age of one and twenty. In many it is given also to *denizens* of foreign birth who have declared an intention of becoming citizens. In some it is given without further specification to every male *inhabitant* of voting age. Residence in the state for some period, varying from three months to two years and a half, is also generally required; sometimes a certain length of residence in the county, the town, or even in the voting precinct, is prescribed. In many of the states it is necessary to have paid one's poll-tax. There is no longer any property

The suffrage

qualification, though there was until recently in Rhode Island. Criminals, idiots, and lunatics are excluded from the suffrage. Some states also exclude duellists and men who bet on elections. Connecticut and Massachusetts shut out persons who are unable to read. In no other country has access to citizenship and the suffrage been made so easy.

A peculiar feature of American governments, and something which it is hard for Europeans to understand, is the almost complete separation between the executive and the legislative departments. In European countries the great executive officers are either members of the legislature, or at all events have the right to be present at its meetings and take part in its discussions; and as they generally have some definite policy by which they are to stand or fall, they are wont to initiate legislation and to guide the course of the discussion. But in America the legislatures, having no such central points about which to rally their forces, carry on their work in an aimless, rambling sort of way, through the agency of many standing committees. When a measure is proposed it is referred to one of the committees for examination before the house will have anything to do with it. Such a preliminary examination is of course necessary where there is a vast amount of legislative work going on. But the private

Separation between legislature and the executive

and disconnected way in which our committee work is done tends to prevent full and instructive discussion in the house, to make the mass of legislation, always chaotic enough, somewhat more chaotic, and to facilitate the various evil devices of lobbying and log-rolling.

In pointing out this inconvenience attendant upon the American plan of separating the executive and legislative departments, I must not be understood as advocating the European plan as preferable for this country. The evils that inevitably flow from any fundamental change in the institutions of a country are apt to be much more serious than the evils which the change is intended to remove. Political government is like a plant; a little watering and pruning do very well for it, but the less its roots are fooled with, the better. In the American system of government the independence of the executive department, with reference to the legislative, is fundamental; and on the whole it is eminently desirable. One of the most serious of the dangers which beset democratic government, especially where it is conducted on a great scale, is the danger that the majority for the time being will use its power tyrannically and unscrupulously, as it is always tempted to do. Against such unbridled democracy we have striven to guard ourselves by various constitutional checks and balances. Our written consti-

tutions and our Supreme Court are important safeguards, as will be shown below. The independence of our executives is another important safeguard. But if our executive departments were mere committees of the legislature — like the English cabinet, for example — this independence could not possibly be maintained; and the loss of it would doubtless entail upon us evils far greater than those which now flow from want of leadership in our legislatures.[1] We must remember that government is necessarily a cumbrous affair, however conducted.

The state executive

The only occasion on which the governor is a part of the legislature is when he signs or vetoes a bill. Then he is virtually in himself a third house. As an executive officer the governor is far less powerful than in the colonial times. We shall see the reason of this after we have enumerated some of the principal offices in the executive department. There is always a secretary of state, whose main duty is to make and keep the records of state transactions. There is always a state treasurer, and usually a state auditor or

[1] In two admirable essays on "Cabinet Responsibility and the Constitution" and "Democracy and the Constitution," Mr. Lawrence Lowell has convincingly argued that the American system is best adapted to the circumstances of this country. Lowell, *Essays on Government*, pp. 20–117, Boston, 1890.

comptroller to examine the public accounts and issue the warrants without which the treasurer cannot pay out a penny of the state's money. There is almost always an attorney-general, to appear for the state in the supreme court in all cases in which the state is a party, and in all prosecutions for capital offences. He also exercises some superintendence over the district attorneys, and acts as legal adviser to the governors and the legislature. There is also in many states a superintendent of education; and in some there are boards of education, of health, of lunacy and charity, bureaux of agriculture, commissioners of prisons, of railroads, of mines, of harbours, of immigration, and so on. Sometimes such boards are appointed by the governor, but such officers as the secretary of state, the treasurer, auditor, and attorney-general are, in almost all the states, elected by the people. They are not responsible to the governor, but to the people who elect them. They are not subordinate to the governor, but are rather his colleagues. Strictly speaking, the governor is not the head of the executive department, but a member of it. The executive department is parcelled out in several pieces, and his is one of the pieces.

The ordinary functions of the governor are four in number. 1. He sends a message to the legislature, at the beginning of each session,

recommending such measures as he would like to see embodied in legislation. 2. He is commander-in-chief of the state militia, and as such can assist the sheriff of a county in putting down a riot, or the President of the United States, in the event of a war. On such occasions the governor may become a personage of immense importance, as, for example, in our Civil War, when President Lincoln's demands for troops met with such prompt response from the men who will be known to history as the great "war governors." 3. The governor is invested with the royal prerogative of pardoning criminals, or commuting the sentences pronounced upon them by the courts. This power belongs to kings in accordance with the old feudal notion that the king was the source or fountain of justice. When properly used it affords an opportunity for rectifying some injustice for which the ordinary machinery of the law could not provide, or for making such allowances for extraordinary circumstances as the court could not properly consider. In our country it is too often improperly used to enable the worst criminals to escape due punishment, just because it is a disagreeable duty to hang them. Such misplaced clemency is pleasant for the murderers, but it makes life less secure for hon-

The governor's functions: 1. Advisor of legislature. 2. Commander of state militia

3. Royal prerogative of pardon

est men and women, and in the less civilized regions of our country it encourages lynch law. 4. In all the states except Rhode Island, Delaware, Ohio, and North Carolina, the governor has a veto upon the acts of the legislature, as above explained; and in ordinary times this power, which is not executive but legislative, is probably the governor's most important and considerable power. In thirteen of the states the governor can veto particular items in a bill for the appropriation of public money, while at the same time he approves the rest of the bill. This is a most important safeguard against corruption, because where the governor does not have this power it is possible to make appropriations for unworthy or scandalous purposes along with appropriations for matters of absolute necessity, and then to lump them all together in the same bill, so that the governor must either accept the bad along with the good or reject the good along with the bad. It is a great gain when the governor can select the items and veto some while approving others. In such matters the governor is often more honest and discreet than the legislature, if for no other reason, because he is one man, and responsibility can be fixed upon him more clearly than upon two or three hundred.

4. Veto power

Such, in brief outline, is the framework of the American state governments. But our account

would be very incomplete without some mention of three points, all of them especially characteristic of the American state, and likely to be overlooked or misunderstood by Europeans.

First, while we have rapidly built up one of the greatest empires yet seen upon the earth, we have left our self-government substantially unimpaired in the process. This is exemplified in two ways: first, in the relationship of the state to its towns and counties, and, secondly, in its relationship to the federal government. Over the township and county governments the state exercises a general supervision; indeed, it clothes them with their authority. Townships and counties have no sovereignty; the state, on the other hand, has many elements of sovereignty, but it does not use them to obliterate or unduly restrict the control of the townships and counties over their own administrative work. It leaves the local governments to administer themselves. As a rule there is only just enough state supervision to harmonize the working of so many local administrations. Such a system of government comes as near as possible toward making all American citizens participate actively in the management of public affairs. It generates and nourishes a public spirit and a universal acquaintance with matters of public interest such as has probably

In building the state, the local self-government was left unimpaired

never before been seen in any great country. Public spirit of equal or greater intensity may have been witnessed in small and highly educated communities, such as ancient Athens or mediæval Florence, but in the United States it is diffused over an area equal to the whole of Europe. Among the leading countries of the world England is the one which comes nearest to the United States in the general diffusion of enlightened public spirit and political capacity throughout all classes of society.

A very notable contrast to the self-government which has produced such admirable results is to be seen in France, and as contrasts are often instructive, let me mention one or two features of the French government. There is nothing like the irregularity and spontaneity there that we have observed in our survey of the United States. Everything is symmetrical.

Instructive contrast with France

France is divided into eighty-nine *departments*, most of them larger than the state of Delaware, some of them nearly as large as Connecticut, and the administration of one department is exactly like that of all the others. The chief officer of the department is the prefect, who is appointed by the minister of the interior, at Paris. The prefect is treasurer, recruiting officer, school superintendent, all in one, and he appoints nearly all inferior officers. The department has a council,

elected by universal suffrage, but it has no power of assessing taxes. The central legislature in Paris decides for it how much money it shall use and how it shall raise it. The department council is not even allowed to express its views on political matters; it can only attend to purely local details of administration.

The smallest civil division in France is the *commune*, which may be either rural or urban. The commune has a municipal council which elects a mayor; but when once elected the mayor becomes directly responsible to the prefect of the department, and through him to the minister of the interior. If these greater officers do not like what the mayor does, they can overrule his acts or even suspend him from office; or upon their complaint the President of the Republic can remove him.

Thus in France people do not manage their own affairs, but they are managed for them by a hierarchy of officials with its head at Paris. This system was devised by the Constituent Assembly in 1790 and brought into completeness by Napoleon in 1800. The men who devised it in 1790 actually supposed that they were inaugurating a system of political freedom (!), and unquestionably it was a vast improvement upon the wretched system which

In France, whether it is nominally a despotic empire or a republic at the top, there is scarcely any self-government at the bottom. Hence government there rests on an insecure foundation

it supplanted ; but as contrasted with American methods and institutions, it is difficult to call it anything else than a highly centralized despotism. It has gone on without essential change through all the revolutions which have overtaken France since 1800. The people have from time to time overthrown an unpopular government at Paris, but they have never assumed the direct control of their own affairs.

Hence it is commonly remarked that while the general intelligence of the French people is very high, their intelligence in political matters is, comparatively speaking, very low. Some persons try to explain this by a reference to peculiarities of race. But if we Americans were to set about giving to the state governments things to do that had better be done by counties and towns, and giving the federal government things to do that had better be done by the states, it would not take many generations to dull the keen edge of our political capacity. We should lose it as inevitably as the most consummate of pianists will lose his facility if he stops practising. It is therefore a fact of cardinal importance that in the United States the local governments of township, county, and city are left to administer themselves instead of being administered by a great bureau with its head at the state capital. In a political society thus constituted from the beginning it has proved possible to build up

our Federal Union, in which the states, while for certain purposes indissolubly united, at the same time for many other purposes retain their self-government intact. As in the case of other aggregates, the nature of the American political aggregate has been determined by the nature of its political units.

Secondly, let us observe how great are the functions retained by our states under the conditions of our Federal Union. The powers granted to our federal government, such as the control over international questions, war and peace, the military forces, the coinage, patents and copyrights, and the regulation of commerce between the states and with foreign countries, — all these are powers relating to matters that affect all the states, but could not be regulated harmoniously by the separate action of the states. In order the more completely to debar the states from meddling with such matters, they are expressly prohibited from entering into agreements with each other or with a foreign power; they cannot engage in war, save in case of actual invasion or such imminent danger as admits of no delay; without consent of Congress they cannot keep a military or naval force in time of peace, or impose custom-house duties. Besides all this they are prohibited from granting titles of nobility, coining money, emitting bills of

Vastness of the functions retained by the states in the American Union

credit, making anything but gold and silver coin a tender in payment of debts, passing bills of attainder, *ex post facto* laws, or laws impairing the obligation of contracts. The force of these latter restrictions will be explained hereafter. Such are the limitations of sovereignty imposed upon the states within the Federal Union.

"Compared with the vast prerogatives of the state legislatures, these limitations seem small enough. All the civil and religious rights of our citizens depend upon state legislation; the education of the people is in the care of the states; with them rests the regulation of the suffrage; they prescribe the rules of marriage, the legal relations of husband and wife, of parent and child; they determine the powers of masters over servants and the whole law of principal and agent, which is so vital a matter in all business transactions; they regulate partnership, debt and credit, insurance; they constitute all corporations, both private and municipal, except such as specially fulfil the financial or other specific functions of the federal government; they control the possession, distribution, and use of property, the exercise of trades, and all contract relations; and they formulate and administer all criminal law, except only that which concerns crimes committed against the United States, on the high seas, or against the law of nations. Space would fail in which to enumer-

ate the particulars of this vast range of power; to detail its parts would be to catalogue all social and business relationships, to examine all the foundations of law and order." [1]

This enumeration, by Mr. Woodrow Wilson, is so much to the point that I content myself with transcribing it. A very remarkable illustration of the preponderant part played by state law in America is given by Mr. Wilson, in pursuance of the suggestion of Mr. Franklin Jameson.[2] Consider the most important subjects of legislation in England during the present century, the subjects which make up almost the entire constitutional history of England for eighty years. These subjects are "Catholic emancipation, parliamentary reform, the abolition of slavery, the amendment of the poor-laws, the reform of municipal corporations, the repeal of the corn laws, the admission of Jews to Parliament, the disestablishment of the Irish church, the alteration of the Irish land laws, the establishment of national education, the introduction of the ballot, and the reform of the criminal law." In the United States only two of these twelve great subjects could be dealt with by the federal

Illustration from recent English history

[1] Woodrow Wilson, *The State: Elements of Historical and Practical Politics*, p. 437.

[2] Jameson, *The Study of the Constitutional and Political History of the States*, J. H. U. Studies, IV., v.

government: the repeal of the corn laws, as being a question of national revenue and custom-house duties, and the abolition of slavery, by virtue of a constitutional amendment embodying some of the results of our Civil War. All the other questions enumerated would have to be dealt with by our state governments; and before the war that was the case with the slavery question also. A more vivid illustration could not be asked for.

How complete is the circle of points in which the state touches the life of the American citizen, we may see in the fact that our state courts make a complete judiciary system, from top to bottom independent of the federal courts. An appeal may be carried from a state court to a federal court in cases which are found to involve points of federal law, or in suits arising between citizens of different states, or where foreign ambassadors are concerned. Except for such cases the state courts make up a complete judiciary world of their own, quite outside the sphere of the United States courts.

Independence of the state courts

We have already had something to say about courts in connection with those primitive areas for the administration of justice, the hundred and the county. In our states there are generally four grades of courts. There are, first, the *justices of the peace*, with jurisdiction over "petty

police offences and civil suits for trifling sums." They also conduct preliminary hearings in cases where persons are accused of serious crimes, and when the evidence seems to warrant it they may commit the accused person for trial before a higher court. The mayor's court in a city usually has jurisdiction similar to that of justices of the peace. Secondly, there are *county* and *municipal courts*, which hear appeals from justices of the peace and from mayor's courts, and have original jurisdiction over a more important grade of civil and criminal cases. Thirdly, there are *superior courts*, having original jurisdiction over the most important cases and over wider areas of country, so that they do not confine their sessions to one place, but move about from place to place, like the English *justices in eyre*. Cases are carried up, on appeal, from the lower to the superior court. Fourthly, there is in every state a *supreme court*, which generally has no original jurisdiction, but only hears appeals from the decisions of the other courts. In New York there is a "supremest" court, styled the *court of appeals*, which has the power of revising sundry judgments of the supreme court; and there is something similar in New Jersey, Illinois, Kentucky, and Louisiana.[1]

Constitution of the state courts

In the thirteen colonies the judges were ap-

[1] Wilson, *The State*, pp. 509–513.

pointed by the governor, with or without the consent of the council, and they held office during life or good behaviour. Among the changes made in our state constitutions since the Revolution, there have been few more important than those which have affected the position of the judges. In most of the states they are now elected by the people for a term of years, sometimes as short as two years. There is a growing feeling that this change was a mistake. It seems to have lowered the general character of the judiciary. The change was made by reasoning from analogy: it was supposed that in a free country all offices ought to be elective and for short terms. But the case of a judge is not really analogous to that of executive officers, like mayors and governors and presidents. The history of popular liberty is much older than the history of the United States, and it would be difficult to point to an instance in which popular liberty has ever suffered from the life tenure of judges. On the contrary, the judge ought to be as independent as possible of all transient phases of popular sentiment, and American experience during the past century seems to teach us that in the few states where the appointing of judges during life or good behaviour has prevailed, the administration of justice has been better than in the states where

Elective and appointive judges

the judges have been elected for specified terms. Since 1869 there has been a marked tendency toward lengthening the terms of elected judges, and in several states there has been a return to the old method of appointing judges by the governor, subject to confirmation by the senate.[1] It is one of the excellent features of our system of federal government, that the several states can thus try experiments each for itself and learn by comparison of results. When things are all trimmed down to a dead level of uniformity by the central power, as in France, a prolific source of valuable experiences is cut off and shut up.

[1] For details, see the admirable monograph of Henry Hitchcock, *American State Constitutions*, p. 53.

VII

WRITTEN CONSTITUTIONS

TOWARD the close of the preceding chapter[1] I spoke of three points especially characteristic of the American state, and I went on to mention two of them. The third point which I had in mind is so remarkable and important as to require a chapter all to itself. In the American state the legislature is not supreme, but has limits to its authority prescribed by a written document, known as the Constitution; and if the legislature happens to pass a law which violates the constitution, then whenever a specific case happens to arise in which this statute is involved, it can be brought before the courts, and the decision of the court, if adverse to the statute, annuls it and renders it of no effect. The importance of this feature of civil government in the United States can hardly be overrated. It marks a momentous advance in civilization, and it is especially interesting as being peculiarly American. Almost everything else in our fundamental institutions was brought

In the American state there is a power above the legislature

[1] See above, p. 191.

by our forefathers in a more or less highly developed condition from England; but the development of the written constitution, with the consequent relation of the courts to the law-making power, has gone on entirely upon American soil.

The germs of the written constitution existed a great while ago. Perhaps it would not be easy to say just when they began to exist. It was formerly supposed by such profound thinkers as Locke and such persuasive writers as Rousseau, that when the first men came together to live in civil society, they made a sort of contract with one another as to what laws they would have, what beliefs they would entertain, what customs they would sanction, and so forth. This theory of the Social Contract was once famous, and exerted a notable influence on political history, and it is still interesting in the same way that spinning-wheels and wooden frigates and powdered wigs are interesting; but we now know that men lived in civil society, with complicated laws and customs and creeds, for many thousand years before the notion had ever entered anybody's head that things could be regulated by contract. That notion we owe chiefly to the ancient Romans, and it took them several centuries to comprehend the idea and put it into practice. We owe

Germs of the idea of a written constitution

Our indebtedness to the ancient Romans

them a debt of gratitude for it. The custom of regulating business and politics and the affairs of life generally by voluntary but binding agreements is something without which we moderns would not think life worth living. It was after the Roman world — that is to say, Christendom, for in the Middle Ages the two terms were synonymous — had become thoroughly familiar with the idea of contract, that the practice grew up of granting written charters to towns, or monasteries, or other corporate bodies. The charter of a mediæval town was a kind of written contract by which the town obtained certain specified immunities or privileges from the sovereign or from a great feudal lord, in exchange for some specified service which often took the form of a money payment. It was common enough for a town to buy liberty for hard cash, just as a man might buy a farm. The word *charter* originally meant simply a paper or written document, and it was often applied to deeds for the transfer of real estate. In contracts of such importance papers or parchment documents were drawn up and carefully preserved as irrefragable evidences of the transaction. And so, in quite significant phrase the towns zealously guarded their charters as the "title-deeds of their liberties."

Mediæval charters

After a while the word charter was applied in England to a particular document which speci-

fied certain important concessions forcibly wrung by the people from a most unwilling sovereign. This document was called *Magna Charta*, or the "Great Charter," signed at Runnymede, June 15, 1215, by John, king of England. After the king had signed it and gone away to his room, he rolled in a mad fury on the floor, screaming curses, and gnawing sticks and straw in the impotence of his wrath.[1] Perhaps it would be straining words to call a transaction in which the consent was so one-sided a "contract," but the idea of Magna Charta was derived from that of the town charters with which people were already familiar. Thus a charter came to mean "a grant made by the sovereign either to the whole people or to a portion of them, securing to them the enjoyment of certain rights." Now in legal usage "a charter differs from a constitution in this, that the former is granted by the sovereign, while the latter is established by the people themselves: both are the fundamental law of the land."[2] The distinction is admirably expressed, but in history it is not always easy to make it. Magna Charta was in form a grant by the sovereign, but it was really drawn up by the barons, who in a certain sense represented the English people; and established by the people

The "Great Charter" (1215)

[1] Green, *Hist. of the English People*, vol. i. p. 248.

[2] Bouvier, *Law Dictionary*, 12th ed., vol. i. p. 259.

after a long struggle which was only in its first stages in John's time. To some extent it partook of the nature of a written constitution.

Let us now observe what happened early in 1689, after James II. had fled from England. On January 28 Parliament declared the throne vacant. Parliament then drew up the "Declaration of Rights," a document very similar in purport to the first eight amendments to our Federal Constitution, and on the 13th of February the two houses offered the crown to William and Mary on condition of their accepting this declaration of the "true, ancient, and indubitable rights of the people of this realm." The crown having been accepted on these terms, Parliament in the following December enacted the famous "Bill of Rights," which simply put their previous declaration into the from of a declaratory statute. The Bill of Rights was not — even in form — a grant from a sovereign; it was an instrument framed by the representatives of the people, and without promising to respect it William and Mary could no more have mounted the throne than a President of the United States could be inducted into office if he were to refuse to take the prescribed oath of allegiance to the Federal Constitution. The Bill of Rights was therefore, strictly speaking, a piece of written constitution; it was a constitution as far as it went.

The "Bill of Rights" (1689)

The seventeenth century, the age when the builders of American commonwealths were coming from England, was especially notable in England for two things. One was the rapid growth of modern commercial occupations and habits, the other was the temporary overthrow of monarchy, soon followed by the final subjection of the Crown to Parliament. Accordingly the sphere of contract and the sphere of popular sovereignty were enlarged in men's minds, and the notion of a written constitution first began to find expression. The "Instrument of Government" which in 1653 created the protectorate of Oliver Cromwell was substantially a written constitution, but it emanated from a questionable authority and was not ratified. It was drawn up by a council of army officers; and "it broke down because the first Parliament summoned under it refused to acknowledge its binding force."[1] The dissolution of this Parliament accordingly left Oliver absolute dictator. In 1656, when it seemed so necessary to decide what sort of government the dictatorship of Cromwell was to prepare the way for, Sir Harry Vane proposed that a *national convention* should be called for drawing up a written constitution.[2]

Foreshadowing of the American idea by Sir Harry Vane (1656)

[1] Gardiner, *Constitutional Documents of the Puritan Revolution*, p. lx.

[2] See Hosmer's *Young Sir Henry Vane*, pp. 432–444, —

The way in which he stated his case showed that he had in him a prophetic foreshadowing of the American idea as it was realized in 1787. But Vane's ideas were too far in advance of his age to be realized then in England. Older ideas, to which men were more accustomed, determined the course of events there, and it was left for Americans to create a government by means of a written constitution. And when American statesmen did so, they did it without any reference to Sir Harry Vane. His relation to the subject has been discovered only in later days, but I mention him here in illustration of the way in which great institutions grow. They take shape when they express the opinions and wishes of a multitude of persons; but it often happens that one or two men of remarkable foresight had thought of them long beforehand.

In America the first attempts at written constitutions were in the fullest sense made by the people, and not through representatives, but directly. In the Mayflower's cabin, before the Pilgrims had landed on Plymouth rock, they subscribed their names to a compact in which they agreed to constitute themselves into a "body politic," and to enact such laws as might be deemed best

The Mayflower compact (1620)

one of the best books ever written for the reader who wishes to understand the state of mind among the English people in the crisis when they laid the foundations of the United States.

for the colony they were about to establish ; and they promised "all due submission and obedience" to such laws. Such a compact is of course too vague to be called a constitution. Properly speaking, a written constitution is a document which defines the character and powers of the government to which its framers are willing to entrust themselves. Almost any kind of civil government might have been framed under the Mayflower compact, but the document is none the less interesting as an indication of the temper of the men who subscribed their names to it.

The first written constitution known to history was that by which the republic of Connecticut was organized in 1639. At first the affairs of the Connecticut settlements had been directed by a commission appointed by the General Court of Massachusetts, but on the 14th of January, 1639, all the freemen of the three river towns — Windsor, Hartford, and Wethersfield — assembled at Hartford, and drew up a written constitution, consisting of eleven articles, in which the frame of government then and there adopted was distinctly described. This document, known as the "Fundamental Orders of Connecticut," created the government under which the people of Connecticut lived for nearly two centuries before they deemed it necessary to

The "Fundamental Orders" of Connecticut (1639)

amend it. The charter granted to Connecticut by Charles II. in 1662 was simply a royal recognition of the government actually in operation since the adoption of the Fundamental Orders.

In those colonies which had charters these documents served, to a certain extent, the purposes of a written constitution. They limited the legislative powers of the colonial assemblies.

Germinal development of the colonial charter toward the modern state constitution

The question sometimes came up as to whether some statute made by the assembly was not in excess of the powers conferred by the charter. This question usually arose in connection with some particular law case, and thus came before the courts for settlement, — first before the courts of the colony; afterwards it might sometimes be carried on appeal before the Privy Council in England. If the court decided that the statute was in transgression of the charter, the statute was thereby annulled.[1] The colonial legislature, therefore, was not a supreme body, even within the colony; its authority was restricted by the terms of the charter. Thus the Americans, for more than a century before the Revolution, were familiarized with the idea of a legislature as a representative body acting within certain limits prescribed by a written

[1] Bryce, *American Commonwealth*, vol. i. pp. 243, 415.

document. They had no knowledge or experience of a supreme legislative body, such as the House of Commons has become since the founders of American states left England. At the time of the Revolution, when the several states framed new governments, they simply put a written constitution into the position of supremacy formerly occupied by the charter. Instead of a document expressed in terms of a royal grant, they adopted a document expressed in terms of a popular edict. To this the legislature must conform ; and people were already somewhat familiar with the method of testing the constitutionality of a law by getting the matter brought before the courts. The mental habit thus generated was probably more important than any other single circumstance in enabling our Federal Union to be formed. Without it, indeed, it would have been impossible to form a durable union.

Abnormal development of the state constitution, encroaching upon the province of the legislature

Before pursuing this subject, we may observe that American state constitutions have altered very much in character since the first part of the present century. The earlier constitutions were confined to a general outline of the organization of the government. They did not undertake to make the laws, but to prescribe the conditions under which laws might be made and executed. Recent state constitu-

tions enter more and more boldly upon the general work of legislation. For example, in some states they specify what kinds of property shall be exempt from seizure for debt, they make regulations as to railroad freight-charges, they prescribe sundry details of practice in the courts, or they forbid the sale of intoxicating liquors. Until recently such subjects would have been left to the legislatures; no one would have thought of putting them into a constitution. The motive in so doing is a wish to put certain laws into such a shape that it will be difficult to repeal them. What a legislature sees fit to enact this year it may see fit to repeal next year. But amending a state constitution is a slow and cumbrous process. An amendment may be originated in the legislature, where it must secure more than a mere majority — perhaps a three fifths or two thirds vote — in order to pass; in some states it must be adopted by two successive legislatures, perhaps by two thirds of one and three fourths of the next; in some states not more than one amendment can be brought before the same legislature; in some it is provided that amendments must not be submitted to the people oftener than once in five years; and so on. After the amendment has at length made its way through the legislature, it must be ratified by a vote of the people at the next general election. Another way to get

a constitution amended is to call a convention for that purpose. In order to call a convention, it is usually necessary to obtain a two thirds vote in the legislature; but in some states "the legislature is required at stated intervals to submit to the people the question of holding such a convention, as in New Hampshire every seven years; in Iowa, every ten years; in Michigan every sixteen years; in New York, Ohio, Maryland, and Virginia, every twenty years."[1] A convention is a representative body elected by the people to meet at some specified time and place for some specified purpose, and its existence ends with the accomplishment of that purpose. It is in this *occasional* character that the convention differs from an ordinary legislative assembly.

With such elaborate checks against hasty action, it is to be presumed that if a law can be once embodied in a state constitution, it will be likely to have some permanence. Moreover, a direct vote by the people gives a weightier sanction to a law than a vote in the legislature. There is also, no doubt, a disposition to distrust legislatures and in some measure do their work for them by direct popular enactment. For such reasons some recent state constitutions have come almost to resemble bodies of statutes.

[1] See Henry Hitchcock's admirable monograph, *American State Constitutions*, p. 19.

Mr. Woodrow Wilson suggestively compares this kind of popular legislation with the Swiss practice known as the *Referendum*; in most of the Swiss cantons an important act of the legislature does not acquire the force of law until it has been *referred* to the people and voted on by them. "The objections to the *referendum*," says Mr. Wilson, "are, of course, that it assumes a discriminating judgment and a fulness of information on the part of the people touching questions of public policy which they do not often possess, and that it lowers the sense of responsibility on the part of legislators."[1] Another serious objection to our recent practice is that it tends to confuse the very valuable distinction between a constitution and a body of statutes, to necessitate a frequent revision of constitutions, and to increase the cumbrousness of law-making. It would, however, be premature at the present time to pronounce confidently upon a practice of such recent origin. It is clear that its tendency is extremely democratic, and that it implies a high standard of general intelligence and independence among the people. If the evils of the practice are found to outweigh its benefits, it will doubtless fall into disfavour.

The Swiss "Referendum"

[1] Wilson, *The State*, p. 490.

VIII

THE FEDERAL UNION

§ 1. *Origin of the Federal Union.*

HAVING now sketched the origin and nature of written constitutions, we are prepared to understand how by means of such a document the government of our Federal Union was called into existence. We have already described so much of the civil government in operation in the United States that this account can be made much more concise than if we had started at the top instead of the bottom and begun to portray our national government before saying a word about states and counties and towns. Bit by bit the general theory of American self-government has already been set before the reader. We have now to observe, in conclusion, what a magnificent piece of constructive work has been performed in accordance with that general theory. We have to observe the building up of a vast empire out of strictly self-governing elements.

There was always one important circumstance in favour of the union of the thirteen

American colonies into a federal nation. The inhabitants were all substantially one people.

English institutions in all the colonies

It is true that in some of the colonies there were a good many persons not of English ancestry, but the English type absorbed and assimilated everything else. All spoke the English language, all had English institutions. Except the development of the written constitution, every bit of civil government described in the preceding pages came to America directly from England, and not a bit of it from any other country, unless by being first filtered through England. Our institutions were as English as our speech. It was therefore comparatively easy for people in one colony to understand people in another, not only as to their words but as to their political ideas. Moreover, during the first half of the eighteenth century, the common danger from the aggressive French enemy on the north and west went far toward awakening in the thirteen colonies a common interest. And after the French enemy had been removed, the assertion by Parliament of its alleged right to tax the Americans threatened all the thirteen legislatures at once, and thus in fact drove the colonies into a kind of federal union.

Confederations among states have generally owed their origin, in the first instance, to military necessities. The earliest league in America,

among white people at least, was the confederacy of New England colonies formed in 1643, chiefly for defence against the Indians. It was finally dissolved amid the troubles of 1684, when the first government of Massachusetts was overthrown. Along the Atlantic coast the northern and the southern colonies were for some time distinct groups, separated by the unsettled portion of the central zone. The settlement of Pennsylvania, beginning in 1681, filled this gap and made the colonies continuous from the French frontier of Canada to the Spanish frontier of Florida. The danger from France began to be clearly apprehended after 1689, and in 1698 one of the earliest plans of union was proposed by William Penn. In 1754, just as the final struggle with France was about to begin, there came Franklin's famous plan for a permanent federal union; and this plan was laid before a congress assembled at Albany for renewing the alliances with the Six Nations.[1] Only seven colonies were represented in this congress. Observe the word "congress." If it had been a legislative body it would more likely have been called a "parlia-

The New England confederacy (1643–84)

Albany Congress (1754)

[1] Franklin's plan was afterward submitted to the several legislatures of the colonies, and was everywhere rejected because the need for union was nowhere strongly felt by the people.

ment." But of course it was nothing of the sort. It was a diplomatic body, composed of delegates representing state governments, like European congresses, — like the Congress of Berlin, for example, which tried to adjust the Eastern Question in 1878. Eleven years after the Albany Congress, upon the news that Parliament had passed the Stamp Act, a congress of nine colonies assembled at New York in October, 1765, to take action thereon.

Stamp Act Congress (1765)

Nine years elapsed without another congress. Meanwhile the political excitement, with occasional lulls, went on increasing, and some sort of coöperation between the colonial governments became habitual. In 1768, after Parliament had passed the Townshend revenue acts, there was no congress, but Massachusetts sent a circular letter to the other colonies, inviting them to coöperate in measures of resistance, and the other colonies responded favourably. In 1772, as we have seen, committees of correspondence between the towns of Massachusetts acted as a sort of provisional government for the commonwealth. In 1773 Dabney Carr, of Virginia, enlarged upon this idea, and committees of correspondence were forthwith instituted between the several colonies. Thus the habit of acting in concert began to be formed. In 1774, after Parliament had passed

Committees of Correspondence (1772–75)

an act overthrowing the government of Massachusetts, along with other offensive measures, a congress assembled in September at Philadelphia, the city most centrally situated as well as the largest. If the remonstrances adopted at this congress had been heeded by the British government, and peace had followed, this congress would probably have been as temporary an affair as its predecessors; people would probably have waited until overtaken by some other emergency. But inasmuch as war followed, the congress assembled again in May, 1775, and thereafter became practically a permanent institution until it died of old age with the year 1788.

Continental Congress (1774–89)

This congress was called "continental" to distinguish it from the "provincial congresses" held in several of the colonies at about the same time. The thirteen colonies were indeed but a narrow strip on the edge of a vast and in large part unexplored continent, but the word "continental" was convenient for distinguishing between the whole confederacy and its several members.

The Continental Congress began to exercise a certain amount of directive authority from the time of its first meeting in 1774. Such authority as it had arose simply from the fact that it represented an agreement on the part of the several governments to pursue a certain line

of policy. It was a diplomatic and executive, but scarcely yet a legislative body. Nevertheless it was the visible symbol of a kind of union between the states. There never was a time when any one of the original states exercised singly the full powers of sovereignty. Not one of them was ever a small sovereign state like Denmark or Portugal. As they acted together under the common direction of the British government in 1759, the year of Quebec, so they acted together under the common direction of that revolutionary body, the Continental Congress, in 1775, the year of Bunker Hill. In that year a "continental army" was organized in the name of the "United Colonies." In the following year, when independence was declared, it was done by the concerted action of all the colonies; and at the same time a committee was appointed by Congress to draw up a written constitution. This constitution, known as the "Articles of Confederation," was submitted to Congress in the autumn of 1777, and was sent to the several states to be ratified. A unanimous ratification was necessary, and it was not until March, 1781, that unanimity was secured and the articles adopted.

The several states were never at any time sovereign states

The Articles of Confederation

Meanwhile the Revolutionary War had advanced into its last stages, having been carried

on from the outset under the general direction of the Continental Congress. When reading about this period of our history, the student must be careful not to be misled by the name "congress" into reasoning as if there were any resemblance whatever between that body and the congress which was created by our Federal Constitution. The Continental Congress was not the parent of our Federal Congress; the former died without offspring, and the latter had a very different origin, as we shall soon see. The former simply bequeathed to the latter a name, that was all.

The Continental Congress was an assembly of delegates from the thirteen states, which from 1774 to 1783 held its sessions at Philadelphia.[1] It owned no federal property, not even the house in which it assembled, and after it had been turned out of doors by a mob of drunken soldiers in June, 1783, it flitted about from place to place, sitting now at Trenton, now at Annapolis, and finally at New York.[2] Each state sent to it as many delegates as it chose, though after the adoption

Nature and powers of the Continental Congress

[1] Except for a few days in December, 1776, when it fled to Baltimore; and again from September, 1777, to June, 1778, when Philadelphia was in possession of the British; during that interval Congress held its meetings at York in Pennsylvania.

[2] See my *Critical Period of American History*, chaps. iii., vi., vii.

of the articles no state could send less than two or more than seven. Each state had one vote, and it took nine votes, or two thirds of the whole, to carry any measure of importance. One of the delegates was chosen president or chairman of the congress, and this position was one of great dignity and considerable influence, but it was not essentially different from the position of any of the other delegates. There were no distinct executive officers. Important executive matters were at first assigned to committees, such as the Finance Committee and the Board of War, though at the most trying time the finance committee was a committee of one, in the person of Robert Morris, who was commonly called the Financier. The work of the finance committee was chiefly trying to solve the problem of paying bills without spending money, for there was seldom any money to spend. Congress could not tax the people or recruit the army. When it wanted money or troops, it could only ask the state governments for them ; and generally it got from a fifth to a fourth part of the troops needed, but of money a far smaller proportion. Sometimes it borrowed money from Holland or France, but often its only resource was to issue paper promises to pay, or the so-called Continental paper money. There were no federal courts,[1] nor marshals to

[1] Except the "Court of Appeals in Cases of Capture,"

execute federal decrees. Congress might issue orders, but it had no means of compelling obedience.

The Continental Congress was therefore not in the full sense a sovereign body. A government is not really a government until it can impose taxes and thus command the money needful for keeping it in existence. Nevertheless the Congress exercised some of the most indisputable functions of sovereignty. "It declared the independence of the United States; it contracted an offensive and defensive alliance with France; it raised and organized a Continental army; it borrowed large sums of money, and pledged what the lenders understood to be the national credit for their repayment; it issued an inconvertible paper currency, granted letters of marque, and built a navy."[1] Finally it ratified a treaty of peace with Great Britain. So that the Congress was really, in many respects, and in the eyes of the world at large, a sovereign body. Time soon showed that the continued exercise of such powers was not compatible with the absence of the power to tax the people. In truth the situation of the Continental Congress was an illogical situation. In the effort of

It was not fully endowed with sovereignty

for an admirable account of which see Jameson's *Essays in the Constitutional History of the United States*, pp. 1–45.

[1] *Critical Period*, chap. iii.

throwing off the sovereignty of Great Britain, the people of these states were constructing a federal union faster than they realized. Their theory of the situation did not keep pace with the facts, and their first attempt to embody their theory, in the Articles of Confederation, was not unnaturally a failure.

At first the powers of the Congress were vague. They were what are called "implied war powers;" that is to say, the Congress had a war with Great Britain on its hands, and must be supposed to have power to do whatever was necessary to bring the war to a successful conclusion. At first, too, when it had only begun to issue paper money, there was a momentary feeling of prosperity. Military success added to its appearance of strength, and the reputation of the Congress reached its highwater mark early in 1778, after the capture of Burgoyne's army and the making of the alliance with France. After that time, with the weary prolonging of the war, the increase of the public debt, and the collapse of the paper currency, its reputation steadily declined. There was also much work to be done in reorganizing the state governments, and this kept at home in the state legislatures many of the ablest men who would otherwise have been sent to the Congress. Thus in point of intellectual capacity the latter body

Decline of the Continental Congress

was distinctly inferior in 1783 to what it had been when first assembled nine years earlier.

The arrival of peace did not help the Congress, but made matters worse. When the absolute necessity of presenting a united front to the common enemy was removed, the weakness of the union was shown in many ways that were alarming. The *sentiment* of union was weak. In spite of the community in language and institutions, which was so favourable to union, the people of the several states had many local prejudices which tended to destroy the union in its infancy. A man was quicker to remember that he was a New Yorker or a Massachusetts man than that he was an American and a citizen of the United States. Neighbouring states levied custom-house duties against one another, or refused to admit into their markets each other's produce, or had quarrels about boundaries which went to the verge of war. Things grew worse every year, until by the autumn of 1786, when the Congress was quite bankrupt and most of the states nearly so, when threats of secession were heard both in New England and in the South, when there were riots in several states and Massachusetts was engaged in suppressing armed rebellion, when people in Europe were beginning to ask whether we were more likely to be seized upon by France or reconquered piecemeal by Great Britain, it

Anarchical tendencies

came to be thought necessary to make some kind of a change.

Men were most unwillingly brought to this conclusion, because they were used to their state assemblies and not afraid of them, but they were afraid of increasing the powers of any government superior to the states, lest they should thus create an unmanageable tyranny. They believed that even anarchy, though a dreadful evil, is not so dreadful as despotism, and for this view there is much to be said. After no end of trouble a convention was at length got together at Philadelphia in May, 1787, and after four months of work with closed doors, it was able to offer to the country the new Federal Constitution. Both in its character and in the work which it did, this Federal Convention, over which Washington presided, and of which Franklin, Madison, and Hamilton were members, was one of the most remarkable deliberative bodies known to history.

The Federal Convention (1787)

We have seen that the fundamental weakness of the Continental Congress lay in the fact that it could not tax the people. Hence although it could for a time exert other high functions of sovereignty, it could only do so while money was supplied to it from other sources than taxation; from contributions made by the states in answer to its "requisitions," from foreign

loans, and from a paper currency. But such resources could not last long. It was like a man's trying to live upon his own promissory notes and upon gifts and unsecured loans from his friends. When the supply of money was exhausted, the Congress soon found that it could no longer comport itself as a sovereign power; it could not preserve order at home, and the situation abroad may be illustrated by the fact that George III. kept garrisons in several of our northwestern frontier towns and would not send a minister to the United States. This example shows that, among the sovereign powers of a government, the power of taxation is the fundamental one upon which all the others depend. Nothing can go on without money.

But the people of the several states would never consent to grant the power of taxation to such a body as the Continental Congress, in which they were not represented. The Congress was not a legislature, but a diplomatic body; it did not represent the people, but the state governments; and a large state like Pennsylvania had no more weight in it than a little state like Delaware. If there was to be any central assembly for the whole union, endowed with the power of taxation, it must be an assembly representing the American people just as the assembly of a single state represented the people of the state.

As soon as this point became clear, it was seen to be necessary to throw the Articles of Confederation overboard, and construct a new national government. As was said above, our Federal Congress is not descended from the Continental Congress. Its parentage is to be sought in the state legislatures. Our federal government was constructed after the general model of the state governments, with some points copied from British usages, and some points that were original and new.

§ 2. *The Federal Congress.*

The Federal House of Representatives is descended, through the state houses of representatives, from the colonial assemblies. It is an assembly representing the whole population of the country as if it were all in one great state. It is composed of members chosen every other year by the people of the states. Persons in any state who are qualified to vote for state representatives are qualified to vote for federal representatives. This arrangement left the power of regulating the suffrage in the hands of the several states, where it still remains, save for the restriction imposed in 1870 for the protection of the southern freedmen. A candidate for election to the House of Representatives must be twenty-five years old,

The House of Representatives

must have been seven years a citizen of the United States, and must be an inhabitant of the state in which he is chosen.

As the Federal Congress is a taxing body, representatives and direct taxes are apportioned among the several states according to the same rule, that is, according to population. At this point a difficulty arose in the Convention as to whether slaves should be counted as population. If they were to be counted, the relative weight of the slave states in all matters of national legislation would be much increased. The northern states thought, with reason, that it would be unduly increased. The difficulty was adjusted by a compromise according to which five slaves were to be reckoned as three persons. Since the abolition of slavery this provision has become obsolete, but until 1860 it was a very important factor in American history.[1]

The three fifths compromise

In the Federal House of Representatives the great states of course have much more weight than the small states. In 1790 the four largest states had thirty-two representatives, while the other nine had only thirty-three. The largest state, Virginia, had ten representatives to one from Delaware. These disparities have increased. In 1880, out of thirty-eight states the nine largest had a majority of the house, and

[1] See my *Critical Period*, chap. vi.

the largest state, New York, had thirty-four representatives to one from Delaware.

This feature of the House of Representatives caused the smaller states in the Convention to oppose the whole scheme of constructing a new government. They were determined that great and small states should have equal weight in Congress. Their steadfast opposition threatened to ruin everything, when fortunately a method of compromise was discovered. It was intended that the national legislature, in imitation of the state legislatures, should have an upper house or Senate; and at first the advocates of a strong national government proposed that the Senate also should represent population, thus differing from the lower house only in the way in which we have seen that it generally differed in the several states. But it happened that in the state of Connecticut the custom was peculiar. There it had always been the custom to elect the governor and upper house by a majority vote of the whole people, while for each township there was an equality of representation in the lower house. The Connecticut delegates in the Convention, therefore, being familiar with a legislature in which the two houses were composed on different principles, suggested a compromise. Let the House of Representatives, they said, represent the people, and let the Senate repre-

The Connecticut compromise

sent the states; let all the states, great and small, be represented equally in the Federal Senate. Such was the famous "Connecticut Compromise." Without it the Convention would probably have broken up without accomplishing anything. When it was adopted, half the work of making the new government was done, for the small states, having had their fears thus allayed by the assurance that they were to be equally represented in the Senate, no longer opposed the work, but coöperated in it most zealously.

Thus it came to pass that the upper house of our national legislature is composed of two senators from each state. As they represent the state, they are chosen by its legislature and not by the people; but when they have taken their seats in the Senate they do not vote by states, like the delegates in the Continental Congress. On the contrary each senator has one vote, and the two senators from the same state may, and often do, vote on opposite sides. The Senate

In accordance with the notion that an upper house should be somewhat less democratic than a lower house, the term of office for senators was made longer than for representatives. The tendency is to make the Senate respond more slowly to changes in popular sentiment, and this is often an advantage. Popular opinion

is often very wrong at particular moments, but with time it is apt to correct its mistakes. We are usually in more danger of suffering from hasty legislation than from tardy legislation. Senators are chosen for a term of six years, and one third of the number of terms expire every second year, so that, while the whole Senate may be renewed by the lapse of six years, there is never a "new Senate." The Senate has thus a continuous existence and a permanent organization; whereas each House of Representatives expires at the end of its two years' term, and is succeeded by a "new House," which requires to be organized by electing its officers, etc., before proceeding to business. A candidate for the senatorship must have reached the age of thirty, must have been nine years a citizen of the United States, and must be an inhabitant of the state which he represents.

The constitution leaves the times, places, and manner of holding elections for senators and representatives to be prescribed in each state by its own legislature; but it gives to Congress the power to alter such regulations, except as to the place of choosing senators. Here we see a vestige of the original theory according to which the Senate was to be peculiarly the home of state rights.

In the composition of the House of Representatives the state legislatures play a very im-

portant part. For the purposes of the election a state is divided into districts corresponding to the number of representatives the state is entitled to send to Congress. These electoral districts are marked out by the legislature, and the division is apt to be made by the preponderating party with an unfairness that is at once shameful and ridiculous. The aim, of course, is so to lay out the districts "as to secure in the greatest possible number of them a majority for the party which conducts the operation. This is done sometimes by throwing the greatest possible number of hostile voters into a district which is anyhow certain to be hostile, sometimes by adding to a district where parties are equally divided some place in which the majority of friendly voters is sufficient to turn the scale. There is a district in Mississippi (the so-called Shoe String district) 250 miles long by 30 broad, and another in Pennsylvania resembling a dumb-bell. . . . In Missouri a district has been contrived longer, if measured along its windings, than the state itself, into which as large a number as possible of the negro voters have been thrown."[1] This trick is called "gerrymandering," from Elbridge Gerry, of Massachusetts, who was vice-president of the United States from 1813 to 1817. It seems to have been first

Electoral districts

"Gerrymandering"

[1] Bryce, *American Commonwealth*, vol. i. p. 121.

devised in 1788 by the enemies of the Federal Constitution in Virginia, in order to prevent the election of James Madison to the first Congress, and fortunately it was unsuccessful.[1] It was introduced some years afterward into Mas-

sachusetts. In 1812, while Gerry was governor of that state, the Republican legislature redistributed the districts in such wise that the shapes of the towns forming a single district in Essex County gave to the district a somewhat

[1] Tyler's *Patrick Henry*, p. 313.

dragon-like contour. This was indicated upon a map of Massachusetts which Benjamin Russell, an ardent Federalist and editor of the "Centinel," hung up over the desk in his office. The celebrated painter, Gilbert Stuart, coming into the office one day and observing the uncouth figure, added with his pencil a head, wings, and claws, and exclaimed, "That will do for a salamander!" "Better say a Gerrymander!" growled the editor; and the outlandish name, thus duly coined, soon came into general currency.[1]

When after an increase in its number of representatives the state has failed to redistribute its districts, the additional member or members are voted for upon a general state ticket, and are called "representatives at large." In Maine, where the census of 1880 had *reduced* the number of representatives and there was some delay in the redistribution, Congress allowed the state in 1882 to elect all its representatives upon a general ticket. The advantage of the district system is that the candidates are likely to be better known by their neighbours, but the election at large is perhaps more

The election at large

[1] Winsor's *Memorial History of Boston*, vol. iii. p. 212; see also Bryce, *loc. cit.* The word is sometimes incorrectly pronounced "jerrymander." Mr. Winsor observes that the back line of the creature's body forms a profile caricature of Gerry's face, with the nose at Middleton.

likely to secure able men.[1] It is the American custom to nominate only residents of the district as candidates for the House of Representatives. A citizen of Albany, for example, would not be nominated for the district in which Buffalo is situated. In the British practice, on the other hand, if an eminent man cannot get a nomination in his own county or borough, there is nothing to prevent his standing for any other county or borough. This system seems more favourable to the independence of the legislator than our system. Some of its advantages are obtained by the election at large.

Time of assembling

Congress must assemble at least once in every year, and the constitution appoints the first Monday in December for the time of meeting; but Congress can, if worth while, enact a law changing the time. The established custom is to hold the election for representatives upon the same day as the election for president, the Tuesday after the first Monday in November. As the period of the new administration does not begin until the fourth day of the following March, the new House of Representatives does not assemble until the December following that date, unless the new president should at some earlier moment summon an extra session of Congress. It thus hap-

[1] The difference is similar to the difference between the French *scrutin d'arrondissement* and *scrutin de liste*.

pens that ordinarily the representatives of the nation do not meet for more than a year after their election; and as their business is at least to give legislative expression to the popular opinion which elected them, the delay is in this instance regarded by many persons as inconvenient and injudicious.

Each house is judge of the elections, qualifications, and returns of its own members; determines its own rules of procedure, and may punish its members for disorderly behaviour, or by a two thirds vote expel a member. Absent members may be compelled under penalties to attend. Each house is required to keep a journal of its proceedings and at proper intervals to publish it, except such parts as for reasons of public policy had better be kept secret. At the request of one fifth of the members present, the yeas and nays must be entered on the journal. During the session of Congress neither house may, without consent of the other, adjourn for more than three days, or to any other place than that in which Congress is sitting.

Senators and representatives receive a salary fixed by law, and as they are federal functionaries they are paid from the federal treasury. In all cases, except treason or felony or breach of the peace, they are privileged from arrest during their attendance in Congress, as also while on their way to it and while returning home; "and

for any speech or debate in either house they shall not be questioned in any other place."

Privileges of members

These provisions are reminiscences of the evil days when the king strove to interfere, by fair means or foul, with free speech in Parliament; and they are important enough to be incorporated in the supreme law of the land. No person can at the same time hold any civil office under the United States government and be a member of either house of Congress.

The vice-president is the presiding officer of the Senate, with power to vote only in case of a tie. The House of Representatives elects its

The Speaker

presiding officer, who is called the Speaker. In the early history of the House of Commons, its presiding officer was naturally enough its *spokesman*. He could speak for it in addressing the Crown. Henry of Keighley thus addressed the Crown in 1301, and there were other instances during that century, until in 1376 the title of Speaker was definitely given to Sir Thomas Hungerford, and from that date the list is unbroken. The title was given to the presiding officers of the American colonial assemblies, and thence it passed on to the state and federal legislatures. The Speaker presides over the debates, puts the question, and decides points of order. He also appoints the committees of the House of Representatives,

and as the initiatory work in our legislation is now so largely done by the committees, this makes him the most powerful officer of the government except the President.

The provisions for impeachment of public officers are copied from the custom in England. Since the fourteenth century the House of Commons has occasionally exercised the power of impeaching the king's ministers and other high public officers, and although the power was not used during the sixteenth century, it was afterward revived and conclusively established. In 1701 it was enacted that the royal pardon could not be pleaded against an impeachment, and this act finally secured the responsibility of the king's ministers to Parliament. An impeachment is a kind of accusation or indictment brought against a public officer by the House of Commons. The court in which the case is tried is the House of Lords, and the ordinary rules of judicial procedure are followed. The regular president of the House of Lords is the Lord Chancellor, who is the highest judicial officer in the kingdom. A simple majority vote secures conviction, and then it is left for the House of Commons to say whether judgment shall be pronounced or not.

Impeachment in England

In the United States the House of Representatives has the sole power of impeachment,

and the Senate has the sole power to try all impeachments. When the President of the United States is tried, the chief justice must preside. As a precaution against the use of impeachment for party purposes, a two thirds vote is required for conviction; and this precaution proved effectual (fortunately, as most persons now admit) in the famous case of President Johnson in 1868. In case of conviction the judgment cannot extend further than "to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit under the United States;" but the person convicted is liable afterward to be tried and punished by the ordinary process of law.

Impeachment in the United States

The provisions of the Constitution for legislation are admirably simple. All bills for raising revenue must originate in the lower house, but the upper house may propose or concur with amendments, as on other bills. This provision was inherited from Parliament, through the colonial legislatures. After a bill has passed both houses it must be sent to the president for approval. If he approves it, he signs it; if not, he returns it to the house in which it originated, with a written statement of his objections, and this statement must be entered in full upon the journal of the house. The bill is then reconsidered,

Veto power of the president

and if it obtains a two thirds vote, it is sent, together with the objections, to the other house. If it there likewise obtains a two thirds vote, it becomes a law, in spite of the objections. Otherwise it fails. If the president keeps a bill longer than ten days (Sundays excepted) without signing it, it becomes a law without his signature; unless Congress adjourns before the expiration of the ten days, in which case it fails to become a law, just as if it had been vetoed. This method of vetoing a bill just before the expiration of a Congress, by keeping it in one's pocket, so to speak, was dubbed a "pocket veto," and was first employed by President Jackson in 1829. The president's veto power is a qualified form of that which formerly belonged to the English sovereign, but has now, as already observed, become practically obsolete. As a means of guarding the country against unwise legislation, it has proved to be one of the most valuable features of our Federal Constitution. In bad hands it cannot do much harm; it can only delay for a short time a needed law. But when properly used it can save the country from laws that if once enacted would sow seeds of disaster very hard to eradicate; and it has repeatedly done so. A single man will often act intelligently where a group of men act foolishly, and, as already observed, he is apt to have a keener sense of responsibility.

§ 3. *The Federal Executive.*

In signing or vetoing bills passed by Congress the president shares in legislation, and is virtually a third house. In his other capacities he is the chief executive officer of the Federal Union; and inasmuch as he appoints the other great executive officers, he is really the head of the executive department, not — like the governor of a state — a mere member of it. His title of "President" is probably an inheritance from the presidents of the Continental Congress. In Franklin's plan of union, in 1754, the head of the executive department was called "Governor General," but that title had an unpleasant sound to American ears. Our great-grandfathers liked "president" better, somewhat as the Romans, in the eighth century of their city, preferred "imperator" to "rex." Then, as it served to distinguish widely between the head of the Union and the heads of the states, it soon fell into disuse in the state governments, and thus "president" has come to be a much grander title than "governor," just as "emperor" has come to be a grander title than "king."[1]

The title of "President"

There was no question which perplexed the Federal Convention more than the question as to the best method of electing the president.

See above, p. 180.

There was a general distrust of popular election for an office so exalted. At one time the Convention decided to have the president elected by Congress, but there was a grave objection to this; it would be likely to destroy his independence, and make him the tool of Congress. Finally the device of an electoral college was adopted. Each state is entitled to a number of electors equal to the number of its representatives in Congress, *plus* two, the number of its senators. Thus to-day Delaware, with one representative, has three electors; Missouri, with fourteen representatives, has sixteen electors; New York, with thirty-four representatives, has thirty-six electors. No federal senator or representative, or any person holding civil office under the United States, can serve as an elector. Each state may appoint or choose its electors in such manner as it sees fit; at first they were more often than otherwise chosen by the legislatures, now they are always elected by the people. The day of election must be the same in all the states.

The electoral college

By an act of Congress passed in 1792 it is required to be within thirty-four days preceding the first Wednesday in December. A subsequent act in 1845 appointed the Tuesday following the first Monday in November as election day.

By the act of 1792 the electors chosen in

each state are required to assemble on the first Wednesday in December at some place in the state which is designated by the legislature. Before this date the governor of the state must cause a certified list of the names of the electors to be made out in triplicate and delivered to the electors. Having met together they vote for president and vice-president, make out a sealed certificate of their vote in triplicate, and attach to each copy a copy of the certified list of their names. One copy must be delivered by a messenger to the president of the Senate at the federal capital before the first Wednesday in January; the second is sent to the same officer through the mail; the third is to be deposited with the federal judge of the district in which the electors meet. If by the first Wednesday in January the certificate has not been received at the federal capital, the secretary of state is to send a messenger to the district judge and obtain the copy deposited with him. The interval of a month was allowed to get the returns in, for those were not the days of railroad and telegraph. The messengers were allowed twenty-five cents a mile, and were subject to a fine of a thousand dollars for neglect of duty. On the second Wednesday in February, Congress is required to be in session, and the votes received are counted and the result declared.[1]

[1] By the act of February 3, 1887, the second Monday in

At first the electoral votes did not state whether the candidates named in them were candidates for the presidency or for the vice-presidency. Each elector simply wrote down two names, only one of which could be the name of a citizen of his own state. In the official count the candidate who had the largest number of votes, provided they were a majority of the whole number, was declared president, and the candidate who had the next to the largest number was declared vice-president. The natural result of this was seen in the first contested election in 1796, which made Adams president, and his antagonist vice-president. In the next election in 1800 it gave to Jefferson and his colleague Burr exactly the same number of votes. In such a case the House of Representatives must elect, and such intrigues followed for the purpose of defeating Jefferson that the country was brought to the verge of civil war. It thus became necessary to change the method. By the twelfth amendment to the Constitution, declared in force in 1804, the present method was adopted. The electors make separate ballots for president

The twelfth amendment (1804)

January is fixed for the meeting of the electoral colleges in all the states. The provisions relating to the first Wednesday in January are repealed. The interval between the second Monday in January and the second Wednesday in February remains available for the settlement of disputed questions.

and for vice-president. In the official count the votes for president are first inspected. If no candidate has a majority, then the House of Representatives must immediately choose the president from the three names highest on the list. In this choice the house votes by states, each state having one vote; a quorum for this purpose must consist of at least one member from two-thirds of the states, and a majority of all the states is necessary for a choice. Then if no candidate for the vice-presidency has a majority, the Senate makes its choice from the two names highest on the list; a quorum for the purpose consists of two thirds of the whole number of senators, and a majority of the whole number is necessary to a choice. Since this amendment was made there has been one instance of an election of the president by the House of Representatives, — that of John Quincy Adams in 1825; and there has been one instance of an election of the vice-president by the Senate, — that of Richard Mentor Johnson in 1837.

One serious difficulty was not yet foreseen and provided for, — that of deciding between two conflicting returns sent in by two hostile sets of electors in the same state, each list being certified by one of two rival governors claiming authority in the same state. Such a case occurred in 1877, when Florida, Louisiana, and

South Carolina were the scene of struggles between rival governments. Ballots for Tilden and ballots for Hayes were sent in at the same time from these states, and in the absence of any recognized means of determining which ballots to count, the two parties in Congress submitted the result to arbitration. An "electoral commission" was created for the occasion, composed of five senators, five representatives, and five judges of the supreme court; and this body decided what votes were to be counted. It was a clumsy expedient, but infinitely preferable to civil war. The question of conflicting returns has at length been set at rest by the act of 1887, which provides that no electoral votes can be rejected in counting except by the concurrent action of the two houses of Congress.

The electoral commission (1877)

The devolution of the presidential office in case of the president's death has also been made the subject of legislative change and amendment. The office of vice-president was created chiefly for the purpose of meeting such an emergency. Upon the accession of the vice-president to the presidency, the Senate would proceed to elect its own president *pro tempore*. An act of 1791 provided that in case of the death, resignation, or disability of both president and vice-president, the succession should devolve first upon the president *pro tempore* of

Presidential succession

the Senate and then upon the speaker of the House of Representatives, until the disability should be removed or a new election be held. But supposing a newly elected president to die and be succeeded by the vice-president before the assembling of the newly elected Congress; then there would be no president *pro tempore* of the Senate and no speaker of the House of Representatives, and thus the death of one person might cause the presidency to lapse. Moreover the presiding officers of the two houses of Congress might be members of the party defeated in the last presidential election; indeed, this is often the case. Sound policy and fair dealing require that a victorious party shall not be turned out because of the death of the president and vice-president. Accordingly an act of 1886 provided that in such an event the succession should devolve upon the members of the cabinet in the following order: secretary of state, secretary of the treasury, secretary of war, attorney-general, postmaster-general, secretary of the navy, secretary of the interior. This would seem to be ample provision against a lapse.

To return to the electoral college: it was devised as a safeguard against popular excitement. It was supposed that the electors in their December meeting would calmly discuss the merits of the ablest men in the country and

make an intelligent selection for the presidency. The electors were to use their own judgment, and it was not necessary that all the electors chosen in one state should vote for the same candidate. The people on election day were not supposed to be voting for a president but for presidential electors. This theory was never realized. The two elections of Washington, in 1788 and 1792, were unanimous. In the second contested election, that of 1800, the electors simply registered the result of the popular vote, and it has been so ever since. Immediately after the popular election, a whole month before the meeting of the electoral college, we know who is to be the next president. There is no law to prevent an elector from voting for a different pair of candidates from those at the head of the party ticket, but the custom has become as binding as a statute. The elector is chosen to vote for specified candidates, and he must do so.

Original purpose of the electoral college not fulfilled

On the other hand, it was not until long after 1800 that all the electoral votes of the same state were necessarily given to the same pair of candidates. It was customary in many states to choose the electors by districts. A state entitled to ten electors would choose eight of them in its eight congressional districts, and there were various ways of choos-

Electors formerly chosen in many states by districts; now usually on a general ticket

ing the other two. In some of the districts one party would have a majority, in others the other, and so the electoral vote of the state would be divided between two pairs of candidates. After 1830 it became customary to choose the electors upon a general ticket, and thus the electoral vote became solid in each state.[1]

Minority presidents

This system, of course, increases the chances of electing presidents who have received a minority of the popular vote. A candidate may carry one state by an immense majority and thus gain six or eight electoral votes; he may come within a few hundred of carrying another state and thus lose thirty-six electoral votes. Or a small third party may divert some thousands of votes from the principal candidate without affecting the electoral vote of the state. Since Washington's second term we have had twenty-five contested elections,[2] and in nine of these the elected president has failed to receive a majority of the popular vote; Adams in 1824 (elected by the House of Representa-

[1] In 1860 the vote of New Jersey was divided between Lincoln and Douglas, but that was because the names of three of the seven Douglas electors were upon two different tickets, and thus got a majority of votes while the other four fell short. In 1892 the state of Michigan chose its electors by districts.

[2] All have been contested, except Monroe's reëlection in 1820, when there was no opposing candidate.

tives), Polk in 1844, Taylor in 1848, Buchanan in 1856, Lincoln in 1860, Hayes in 1876, Garfield in 1880, Cleveland in 1884, Harrison in 1888. This has suggested more or less vague speculation as to the advisableness of changing the method of electing the president. It has been suggested that it would be well to abolish the electoral college, and resort to a direct popular vote, without reference to state lines. Such a method would be open to one serious objection. In a closely contested election on the present method the result may remain doubtful for three or four days, while a narrow majority of a few hundred votes in some great state is being ascertained by careful counting. It was so in 1884. This period of doubt is sure to be a period of intense and dangerous excitement. In an election without reference to states, the result would more often be doubtful, and it would be sometimes necessary to count every vote in every little out-of-the-way corner of the country before the question could be settled. The occasions for dispute would be multiplied a hundred-fold, with most demoralizing effect. Our present method is doubtless clumsy, but the solidity of the electoral colleges is a safeguard, and as all parties understand the system it is in the long run as fair for one as for another.

Advantages of the electoral system

The Constitution says nothing about the method of nominating candidates for the presidency, neither has it been made the subject of legislation. It has been determined by convenience. It was not necessary to nominate Washington, and the candidacies of Adams and Jefferson were also matters of general understanding. In 1800 the Republican and Federalist members of Congress respectively held secret meetings or caucuses, chiefly for the purpose of agreeing upon candidates for the vice-presidency and making some plans for the canvass. It became customary to nominate candidates in such congressional caucuses, but there was much hostile comment upon the system as undemocratic. Sometimes the "favourite son" of a state was nominated by the legislature, but as the means of travel improved, the nominating convention came to be preferred. In 1824 there were four candidates for the presidency, — Adams, Jackson, Clay, and Crawford. Adams was nominated by the legislatures of most of the New England states; Clay by the legislature of Kentucky, followed by the legislatures of Missouri, Ohio, Illinois, and Louisiana; Crawford by the legislature of Virginia; and Jackson by a mass convention of the people of Blount County in Tennessee, followed by local conventions in many other states. The congres-

Nomination of candidates by congressional caucus (1800–24)

sional caucus met and nominated Crawford, but this indorsement did not help him,[1] and this method was no longer tried. In 1832 for the first time the candidates were all nominated in national conventions.

These conventions, as fully developed, are representative bodies chosen for the specific purpose of nominating candidates and making those declarations of principle and policy known as "platforms." Each state is allowed twice as many delegates as it has electoral votes. "The delegates are chosen by local conventions in their several states, viz., two for each congressional district by the party convention of that district, and four for the whole state (called delegates-at-large) by the state convention. As each convention is composed of delegates from primaries, it is the composition of the primaries which determines that of the local conventions, and it is the composition of the local conventions which determines that of the national."[2] The "primary" is the smallest nominating convention. It stands in somewhat the same relation to the national convention as the relation of a township or ward to the whole United States. A primary is a little caucus of all the voters of

Nominating conventions

The "primary"

[1] Stanwood, *History of Presidential Elections*, pp. 80–83.

[2] Bryce, *American Commonwealth*, vol. ii. p. 145; see also p. 52.

one party who live within the bounds of the township or ward. It differs in composition from the town-meeting in that all its members belong to one party. It has two duties: one is to nominate candidates for the local offices of the township or ward; the other is to choose delegates to the county or district convention. The primary, as its name indicates, is a primary and not a representative assembly. The party voters in a township or ward are usually not too numerous to meet together, and all ought to attend such meetings, though in practice too many people stay away. By the representative system, through various grades of convention, the wishes and character of these countless little primaries are at length expressed in the wishes and character of the national party convention, and candidates for the presidency and vice-presidency are nominated.

Qualifications for the presidency

The qualifications for the two offices are of course the same. Foreign-born citizens are not eligible, though this restriction did not include such as were citizens of the United States at the time when the Constitution was adopted. The candidate must have reached the age of thirty-five, and must have been fourteen years a resident of the United States.

The president's term of office is four years. The Constitution says nothing about his re-

election, and there is no written law to prevent his being reëlected a dozen times. But Washington after serving two terms refused to accept the office a third time. Jefferson in 1808 was "earnestly besought by many and influential bodies of citizens to become a candidate for a third term;"[1] and had he consented there is scarcely a doubt that he would have been elected. His refusal established a custom which has never been infringed, though there were persons in 1876 and again in 1880 who wished to secure a third term for Grant.

The term of office

The president is commander-in-chief of the military and naval forces of the United States, and of the militia of the several states when actually engaged in the service of the United States; and he has the royal prerogative of granting reprieves and pardons for offences against the United States, except in cases of impeachment.[2]

Powers and duties of the president

He can make treaties with foreign powers, but they must be confirmed by a two thirds vote of the Senate. He appoints ministers to foreign countries, consuls, and the greater federal officers, such as the heads of executive departments and judges of the Supreme Court, and all these appointments are subject to confirmation by the Senate. He also appoints a vast

[1] Morse's *Jefferson*, p. 318. [2] See above, p. 239.

number of inferior officers, such as postmasters and revenue collectors, without the participation of the Senate. When vacancies occur during the recess of the Senate, he may fill them by granting commissions to expire at the end of the next session. He commissions all federal officers. He receives foreign ministers. He may summon either or both houses of Congress to an extra session, and if the two houses disagree with regard to the time of adjournment, he may adjourn them to such time as he thinks best, but of course not beyond the day fixed for the beginning of the next regular session.

The president must from time to time make a report to Congress on the state of affairs in the country and suggest such a line of policy or such special measures as may seem good to him. This report has taken the form of an annual written message. Washington and Adams began their administrations by addressing Congress in a speech, to which Congress replied; but it suited the opposite party to discover in this an imitation of the British practice of opening Parliament with a speech from the sovereign. It was accordingly stigmatized as "monarchical," and Jefferson (though without formally alleging any such reason) set the example, which has been followed ever since, of addressing Congress in

The president's message

a written message.[1] Besides this annual message, the president may at any time send in a special message relating to matters which in his opinion require immediate attention.

The effectiveness of a president's message depends of course on the character of the president and the general features of the political situation. That separation between the executive and legislative departments, which is one of the most distinctive features of civil government in the United States, tends to prevent the development of leadership. An English prime minister's policy, so long as he remains in office, must be that of the House of Commons; power and responsibility are concentrated. An able president may virtually direct the policy of his party in Congress, but he often has a majority against him in one house and sometimes in both at once. Thus in dividing power we divide and weaken responsibility. To this point I have already alluded as illustrated in our state governments.[2]

The Constitution made no specific provisions for the creation of executive departments, but left the matter to Congress. At the be-

[1] Jefferson, moreover, was a powerful writer and a poor speaker.

[2] The English method, however, would probably not work well in this country, and might prove to be a source of great and complicated dangers. See above, p. 187.

ginning of Washington's administration three secretaryships were created, — those of state, treasury, and war; and an attorney general was appointed. Afterward the department of the navy was separated from that of war, the postmaster-general was made a member of the administration, and as lately as 1849 the department of the interior was organized. The heads of these departments are the president's advisers, but they have as a body no recognized legal existence or authority. They hold their meetings in a room at the president's executive mansion, the White House, but no record is kept of their proceedings, and the president is not bound to heed their advice. This body has always been called the "Cabinet," after the English usage. It is like the English cabinet in being composed of heads of executive departments and in being, as a body, unknown to the law; in other respects the difference is very great. The English cabinet is the executive committee of the House of Commons, and exercises a guiding and directing influence upon legislation. The position of the president is not at all like that of the prime minister; it is more like that of the English sovereign, though the latter has not nearly so much power as the president; and the American cabinet in some respects resembles the English

Executive departments

The cabinet

privy council, though it cannot make ordinances.

The secretary of state ranks first among our cabinet officers. He is often called our prime minister or "premier," but there could not be a more absurd use of language. In order to make an American personage corresponding to the English prime minister we must first go to the House of Representatives, take its committee of ways and means and its committee on appropriations, and unite them into one committee of finance; then we must take the chairman of this committee, give him the power of dissolving the House and ordering a new election, and make him master of all the executive departments, while at the same time we strip from the president all real control over the administration. This exalted finance-chairman would be much like the First Lord of the Treasury, commonly called the prime minister. This illustration shows how wide the divergence has become between our system and that of Great Britain.

The secretary of state

Our secretary of state is our minister of foreign affairs, and is the only officer who is authorized to communicate with other governments in the name of the president. He is at the head of the diplomatic and consular service, issuing the instructions to our ministers abroad, and he takes a leading part in the negotiation

of treaties. To these ministerial duties he adds some that are more characteristic of his title of secretary. He keeps the national archives, and superintends the publication of laws, treaties, and proclamations; and he is the keeper of the great seal of the United States.

Diplomatic and consular service

Our foreign relations are cared for in foreign countries by two distinct classes of officials: ministers and consuls. The former represent the United States government in a diplomatic capacity; the latter have nothing to do with diplomacy or politics, but look after our commercial interests in foreign countries. Consuls exercise a protective care over seamen, and perform various duties for Americans abroad. They can take testimony and administer estates. In some non-Christian countries, such as China, Japan, and Turkey, they have jurisdiction over criminal cases in which Americans are concerned. Formerly our ministers abroad were of only three grades: (1) "envoys extraordinary and ministers plenipotentiary;" (2) "ministers resident;" (3) *chargés d'affaires*. The first two are accredited by the president to the head of government of the countries to which they are sent; the third are accredited by the secretary of state to the minister of foreign affairs in the countries to which they are sent. We still retain these grades, which correspond to the lower grades

of the diplomatic service in European countries. Until lately we had no highest grade answering to that of "ambassador," perhaps because when our diplomatic service was organized the United States did not yet rank among first-rate powers, and could not expect to receive ambassadors. Great powers, like France and Germany, send ambassadors to each other, and envoys to inferior powers, like Denmark or Greece or Guatemala. When we send envoys to the great powers, we rank ourselves along with inferior powers; and diplomatic etiquette as a rule obliges the great powers to send to us the same grade of minister that we send to them. There were found to be some practical inconveniences about this, so that in 1892 the highest grade was adopted and our ministers to Great Britain and France were made ambassadors.

The secretary of the treasury

The cabinet officer second in rank and in some respects first in importance is the secretary of the treasury. He conducts the financial business of the government, superintends the collection of revenue, and gives warrants for the payment of moneys from the treasury. He also superintends the coinage, the national banks, the custom-houses, the coast-survey and lighthouse system, the marine hospitals, and life-saving service.[1] He

[1] Many of these details concerning the executive departments are admirably summarized, and with more fulness than

sends reports to Congress, and suggests such measures as seem good to him. Since the Civil War his most weighty business has been the management of the national debt. He is aided by two assistant secretaries, six auditors, a register, a comptroller, a solicitor, a director of the mint, commissioner of internal revenue, chiefs of the bureau of statistics and bureau of engraving and printing, etc. The business of the treasury department is enormous, and no part of our government has been more faithfully administered. Since 1789 the treasury has disbursed more than seven billions of dollars without one serious defalcation. No man directly interested in trade or commerce can be appointed secretary of the treasury, and the department has almost always been managed by "men of small incomes bred either to politics or the legal profession." [1]

War and navy

The war and navy departments need no special description here. The former is divided into ten and the latter into eight bureaus. The naval department, among many duties, has charge of the naval observatory at Washington and publishes the nautical almanac.

The department of the interior conducts a vast and various business, as is shown by the

comports with the design of the present work, in Thorpe's *Government of the People of the United States*, pp. 183–193.

[1] Schouler, *Hist. of the U. S.*, vol. i. p. 95.

designations of its eight bureaus, which deal with public lands, Indian affairs, pensions, patents, education (chiefly in the way of gathering statistics and reporting upon school affairs), agriculture, public documents, and the census. In 1889 the bureau of agriculture was organized as a separate department. The weather bureau forms a branch of the department of agriculture.

Interior

The departments of the postmaster-general and attorney-general need no special description. The latter was organized in 1870 into the department of justice. The attorney-general is the president's legal adviser, and represents the United States in all law-suits to which the United States is a party. He is aided by a solicitor-general and other subordinate officers.

Postmaster-general and attorney-general

§ 4. *The Nation and the States.*

We have left our Federal Convention sitting a good while at Philadelphia, while we have thus undertaken to give a coherent account of our national executive organization, which has in great part grown up since 1789 with the growth of the nation. Observe how wisely the Constitution confines itself to a clear sketch of fundamentals, and leaves as much as possible to be developed by circumstances. In this feature lies partly the flexible strength, the adaptable-

ness, of our Federal Constitution. That strength lies partly also in the excellent partition of powers between the federal government and the several states.

We have already remarked upon the vastness of the functions retained by the states. At the same time the powers granted to Congress have proved sufficient to bind the states together into a union that is more than a mere confederation. From 1776 to 1789 the United States *were* a confederation; after 1789 *it was* a federal nation. The passage from plural to singular was accomplished, although it took some people a good while to realize the fact. The German language has a neat way of distinguishing between a loose confederation and a federal union. It calls the former a *Staatenbund* and the latter a *Bundesstaat*. So in English, if we liked, we might call the confederation a *Band-of-States* and the federal union a *Banded-State*. There are two points especially in our Constitution which transformed our country from a Band-of-States into a Banded-State.

Difference between confederation and federal union

The first was the creation of a Federal House of Representatives, thus securing for Congress the power "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common welfare of the United States." Other powers are

Powers granted to Congress

naturally attached to this, — such as the power to borrow money on the credit of the United States; to regulate foreign and domestic commerce; to coin money and fix the standard of weights and measures; to provide for the punishment of counterfeiters; to establish post-offices and post-roads; to issue copyrights and patents; to "define and punish felonies committed on the high seas, and offences against the law of nations; to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;" to raise and support an army and navy, and to make rules for the regulation of the land and naval forces; to provide for calling out the militia to suppress insurrections and repel invasions, and to govern this militia while actually employed in the service of the United States. The several states, however, train their own militia and appoint the officers. Congress may also establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies. It also exercises exclusive control over the District of Columbia,[1] as the seat of the national government, and over forts, magazines, arsenals, dockyards, and other needful buildings, which it erects within the several states upon land purchased for such purposes with the consent of the state legislature.

Congress is also empowered "to make all

[1] Ceded to the United States by Maryland and Virginia.

laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof." This may be called the Elastic Clause of the Constitution; it has undergone a good deal of stretching for one purpose and another, and, as we shall presently see, it was a profound disagreement in the interpretation of this clause that after 1789 divided the American people into two great political parties.

The "Elastic Clause"

The national authority of Congress is further sharply defined by the express denial of sundry powers to the several states. These we have already enumerated.[1] There was an especial reason for prohibiting the states from issuing bills of credit, or making anything but gold and silver coin a tender in payment of debts. During the years 1785 and 1786 a paper money craze ran through the country; most of the states issued paper notes, and passed laws obliging their citizens to receive them in payment of debts. Now a paper dollar is not money; it is only the government's promise to pay a dollar. As long as you can send it to the treasury and get a gold dollar in exchange, it is worth a dollar. It is this exchangeableness that makes it

Powers denied to the states

Paper currency

[1] See above, p. 195.

worth a dollar. When government makes the paper dollar now a "legal tender," *i. e.* when it refuses to give you the gold dollar and makes you take its note instead, the note soon ceases to be worth a dollar. You would rather have the gold than the note, for the mere fact that government refuses to give the gold shows that it is in financial difficulties. So the note's value is sure to fall, and if the government is in serious difficulty, it falls very far, and as it falls it takes more of it to buy things. Prices go up. There was a time (1864) during our Civil War when a paper dollar was worth only forty cents and a barrel of flour cost $23. But that was nothing to the year 1780, when the paper dollar issued by the Continental Congress was worth only a mill, and flour was sold in Boston for $1,575 a barrel! When the different states tried to make paper money, it made confusion worse confounded, for the states refused to take each other's money, and this helped to lower its value. In some states the value of the paper dollar fell in less than a year to twelve or fifteen cents. At such times there is always great demoralization and suffering, especially among the poorer people; and with all the experience of the past to teach us, it may now be held to be little less than a criminal act for a government, under any circumstances, to make its paper notes a legal tender. The excuse for the Con-

tinental Congress was that it was not completely a government and seemed to have no alternative, but there is no doubt that the paper currency damaged the country much more than the arms of the enemy by land or sea. The feeling was so strong about it in the Federal Convention that the prohibition came near being extended to the national government, but the question was unfortunately left undecided.[1]

Some express prohibitions were laid upon the national government. Duties may be laid upon imports but not upon exports; this wise restriction was a special concession to South Carolina, which feared the effect of an export duty upon rice and indigo. Duties and excises must be uniform throughout the country, and no commercial preference can be shown to one state over another; absolute free trade is the rule between the states. A census must be taken every ten years in order to adjust the representation, and no direct tax can be imposed except according to the census. No money can be drawn from the treasury except "in consequence of appropriations made by law," and accounts must be regularly kept and published. The privilege of the writ of *habeas corpus* cannot be suspended except "when, in case of rebellion or invasion,

Powers denied to Congress

[1] See my *Critical Period of American History*, chaps. iv., vi.

the public safety may require it;" and "no bill of attainder, or *ex post facto* law," can be passed. A bill of attainder is a special legislative act by which a person may be condemned to death, or to outlawry and banishment, without the opportunity of defending himself which he would have in a court of law. "No evidence is necessarily adduced to support it,"[1] and in former times, especially in the reign of Henry VIII., it was a formidable engine for perpetrating judicial murders. Bills of attainder long ago ceased to be employed in England, and the process was abolished by statute in 1870.

Bills of attainder

No title of nobility can be granted by the United States, and no federal officer can accept a present, office, or title from a foreign state without the consent of Congress. "No religious test shall ever be required as a qualification to any office or public trust under the United States." Full faith and credit must be given in each state to the public acts and records, and to the judicial proceedings of every other state; and it is left for Congress to determine the manner in which such acts and proceedings shall be proved or certified. The citizens of each state are "entitled to all privileges and immunities of citizens in the several

Intercitizenship

[1] Taswell-Langmead, *English Constitutional History*, p. 385.

states." There is mutual extradition of criminals, and as a concession to the Southern states it was provided that fugitive slaves should be surrendered to their masters. The United States guarantees to every state a republican form of government; it protects each state against invasion; and on application from the legislature of a state, or from the executive when the legislature cannot be convened, it lends a hand in suppressing insurrection.

Amendments to the Constitution may at any time be proposed in pursuance of a two thirds vote in both houses of Congress, or by a convention called at the request of the legislatures of two thirds of the states. The amendments are not in force until ratified by three fourths of the states, either through their legislatures or through special conventions, according to the preference of Congress. This makes it difficult to change the Constitution, as it ought to be; but it leaves it possible to introduce changes that are very obviously desirable. The Articles of Confederation could not be amended except by a unanimous vote of the states, and this made their amendment almost impossible.

Mode of making amendments

After assuming all debts contracted and engagements made by the United States before its adoption, the Constitution goes on to declare itself the supreme law of the land. By it,

and by the laws and treaties made under it, the judges in every state are bound, in spite of anything contrary in the constitution or laws of any state.

§ 5. *The Federal Judiciary.*

The creation of a federal judiciary was the second principal feature in the Constitution, which transformed our country from a loose confederation into a federal nation, from a *Band-of-States* into a *Banded-State*. We have seen that the American people were already somewhat familiar with the method of testing the constitutionality of a law by getting the matter brought before the courts.[1] In the case of a conflict between state law and federal law, the only practicable peaceful solution is that which is reached through a judicial decision. The federal authority also needs the machinery of courts in order to enforce its own decrees.

Need for a federal judiciary

The federal judiciary consists of a supreme court, circuit courts, and district courts.[2] At pre-

[1] See above, p. 211.

[2] In order to relieve the supreme court of the United States, which had come to be overburdened with business, a new court, with limited appellate jurisdiction, called the *circuit court of appeals*, was organized in 1892. It consists primarily of nine *appeal judges*, one for each of the nine circuits. For any given circuit the supreme court justice of the circuit, the appeal judge of the circuit, and the circuit judge constitute the court of appeal.

sent the supreme court consists of a chief justice and eight associate justices. It holds annual sessions in the city of Washington, beginning on the second Monday of October. Each of these nine judges is also presiding judge of a circuit court. The area of the United States, not including the territories, is divided into nine circuits, and in each circuit the presiding judge is assisted by special circuit judges. The circuits are divided into districts, seventy-two in all, and in each of these there is a special district judge. The districts never cross state lines. Sometimes a state is one district, but populous states with much business are divided into two or even three districts. "The circuit courts sit in the several districts of each circuit successively, and the law requires that each justice of the supreme court shall sit in each district of his circuit at least once every two years."[1] District judges are not confined to their own districts; they may upon occasion exchange districts as ministers exchange pulpits. A district judge may, if need be, act as a circuit judge, as a major may command a regiment. All federal judges are appointed by the president, with the consent of the Senate, to serve during good behaviour. Each district has its

Federal courts and judges

[1] See Wilson, *The State*, p. 554. I have closely followed, though with much abridgment, the excellent description of our federal judiciary, pp. 555–561.

district attorney, whose business is to prosecute offenders against the federal laws and to conduct civil cases in which the national government is either plaintiff or defendant. Each district has also its *marshal*, who has the same functions under the federal court as the sheriff under the state court. The procedure of the federal court usually follows that of the courts of the state in which it is sitting.

District attorneys and marshals

The federal jurisdiction covers two classes of cases: (1) those which come before it "*because of the nature of the questions involved;* for instance, admiralty and maritime cases, navigable waters being within the exclusive jurisdiction of the federal authorities, and cases arising out of the Constitution, laws, or treaties of the United States or out of conflicting grants made by different states"; (2) those which come before it "*because of the nature of the parties to the suit*," such as cases affecting the ministers of foreign powers or suits between citizens of different states.

The federal jurisdiction

The division of jurisdiction between the upper and lower federal courts is determined chiefly by the size and importance of the cases. In cases where a state or a foreign minister is a party the supreme court has original jurisdiction, in other cases it has appellate jurisdiction, and "any case which involves the interpretation of the Consti-

tution can be taken to the supreme court, however small the sum in dispute." If a law of any state or of the United States is decided by the supreme court to be in violation of the Constitution, it instantly becomes void and of no effect. In this supreme exercise of jurisdiction, our highest federal tribunal is unlike any other tribunal known to history. The supreme court is the most original of all American institutions. It is peculiarly American, and for its exalted character and priceless services it is an institution of which Americans may well be proud.

§ 6. *Territorial Government.*

The Constitution provided for the admission of new states to the Union, but it does not allow a state to be formed within another state. A state cannot "be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress." Shortly before the making of the Constitution, the United States had been endowed for the first time with a public domain. The territory northwest of the Ohio River had been claimed, on the strength of old grants and charters, by Massachusetts, Connecticut, New York, and Virginia. In 1777 Maryland refused to sign the Articles of Confederation until these states should agree to cede their

The Northwest Territory

claims to the United States, and thus in 1784 the federal government came into possession of a magnificent territory, out of which five great states — Ohio, Indiana, Illinois, Michigan, and Wisconsin — have since been made. While the Federal Convention was sitting at Philadelphia, the Continental Congress at New York was doing almost its last and one of its greatest pieces of work in framing the Ordinance of 1787 for the organization and government of this newly acquired territory. The ordinance created a territorial government with governor and two-chambered legislature, courts, magistrates, and militia. Complete civil and religious liberty was guaranteed, negro slavery was prohibited, and provision was made for free schools.[1]

The Ordinance of 1787

In 1803 the enormous territory known as Louisiana, comprising everything (except Texas) between the Mississippi River and the crest of the Rocky Mountains, was purchased from France. A claim upon the Oregon territory was soon afterward made by discovery and exploration, and finally settled in 1846 by treaty with Great Britain. In 1848 by conquest and in 1853 by purchase the remaining Pacific lands

[1] The manner in which provision should be made for these schools had been pointed out two years before in the land-ordinance of 1785, as heretofore explained. See above, p. 92.

were acquired from Mexico. All of this vast region has been at some time under territorial government. As for Texas, on the other hand, it has never been a territory. Texas revolted from Mexico in 1836 and remained an independent state until 1845, when it was admitted to the Union. Territorial government has generally passed through three stages: first, there are governors and judges appointed by the president; then as population increases, there is added a legislature chosen by the people and empowered to make laws subject to confirmation by Congress; finally, entire legislative independence is granted. The territory is then ripe for admission to the Union as a state.

Other territories and their government

§ 7. *Ratification and Amendments.*

Thus the work of the Ordinance of 1787 was in a certain sense supplementary to the work of framing the Constitution. When the latter instrument was completed, it was provided that "the ratifications of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same." The Constitution was then laid before the Continental Congress, which submitted it to the states. In one state after another, conventions were held, and at length the Constitution was ratified. There was much

opposition to it, because it seemed to create a strange and untried form of government which might develop into a tyranny. There was a fear that the federal power might crush out self-government in the states. This dread was felt in all parts of the country. Besides this, there was some sectional opposition between North and South, and in Virginia there was a party in favour of a separate southern confederacy. But South Carolina and Georgia were won over by the concessions in the Constitution to slavery, and especially a provision that the importation of slaves from Africa should not be prohibited until 1808. By winning South Carolina and Georgia the formation of a "solid South" was prevented.

Concessions to the South

The first states to adopt the Constitution were Delaware, Pennsylvania, New Jersey, Georgia, and Connecticut, with slight opposition, except in Pennsylvania. Next came Massachusetts, where the convention was very large, the discussion very long, and the action in one sense critical. One chief source of dissatisfaction was the absence of a sufficiently explicit Bill of Rights, and to meet this difficulty, Massachusetts ratified the Constitution, but proposed amendments; and this course was followed by other states. Maryland and South Carolina came next, and New Hampshire made the ninth. Virginia and New York

Bill of Rights proposed

then ratified by very narrow majorities and after prolonged discussion. North Carolina did not come in until 1789, and Rhode Island not until 1790.

In September, 1789, the first ten amendments were proposed by Congress, and in December, 1791, they were declared in force. Their provisions are similar to those of the English Bill of Rights, enacted in 1689,[1] but are much more full and explicit. They provide for freedom of speech and of the press, the free exercise of religion, the right of the people to assemble and petition Congress for a redress of grievances, their right to bear arms, and to be secure against unreasonable searches and seizures. The quartering of soldiers is guarded, general search-warrants are prohibited, jury trial is guaranteed, and the taking of private property for public use without due compensation, as well as excessive fines and bail and the infliction of "cruel and unusual punishment" are forbidden. Congress is prohibited from establishing any form of religion.

The first ten amendments

Finally, it is declared that "the enumeration of certain rights shall not be construed to deny or disparage others retained by the people," and that "the powers not granted to the United States by the Constitution, nor prohibited by it

[1] See above, p. 206. This is further elucidated in Appendixes B and D.

to the states, are reserved to the states respectively, or to the people."

§ 8. *A Few Words about Politics.*

A chief source of the opposition to the new federal government was the dread of federal taxation. People who found it hard to pay their town, county, and state taxes felt that it would be ruinous to have to pay still another kind of tax. In the mere fact of federal taxation, therefore, they were inclined to see tyranny. With people in such a mood it was necessary to proceed cautiously in devising measures of federal taxation.

Federal taxation

This was well understood by our first secretary of the treasury, Alexander Hamilton, and in the course of his administration of the treasury he was once roughly reminded of it. The two methods of federal taxation adopted at his suggestion were duties on imports and excise on a few domestic products, such as whiskey and tobacco. The excise, being a tax which people could see and feel, was very unpopular, and in 1794 the opposition to it in western Pennsylvania grew into the famous "Whiskey Insurrection," against which President Washington thought it prudent to send an army of 16,000 men. This formidable display of federal power suppressed the insurrection without bloodshed.

Excise

Nowhere was there any such violent opposition to Hamilton's scheme of custom-house duties on imported goods. People had always been familiar with such duties. In the colonial times they had been levied by the British government without calling forth resistance, until Charles Townshend made them the vehicle of a dangerous attack upon American self-government.[1] After the Declaration of Independence, custom-house duties were levied by the state governments and the proceeds were paid into the treasuries of the several states. Before 1789, much trouble had arisen from oppressive tariff-laws enacted by some of the states against others. By taking away from the states the power of taxing imports, the new Constitution removed this source of irritation. It became possible to lighten the burden of custom-house duties, while by turning the full stream of them into the federal treasury an abundant national revenue was secured at once. Thus this part of Hamilton's policy met with general approval. The tariff has always been our favourite device for obtaining a national revenue. During our Civil War, indeed, the national government resorted extensively to direct taxation, chiefly in the form of revenue stamps, though it also put a tax upon billiard-

Tariff

[1] See my *War of Independence*, pp. 58–83; and my *History of the United States for Schools*, pp. 192–203.

tables, pianos, gold watches, and all sorts of things. But after the return of peace these unusual taxes were one after another discontinued, and since then our national revenue has been raised, as in Hamilton's time, from duties on imports and excise on a few domestic products, chiefly tobacco and distilled liquors.[1]

Hamilton's measures as secretary of the treasury embodied an entire system of public policy, and the opposition to them resulted in the formation of the two political parties into which, under one name or another, the American people have at most times been divided. Hamilton's opponents, led by Jefferson, objected to his principal measures that they assumed powers in the national government which were not granted to it by the Constitution. Hamilton then fell back upon the Elastic Clause[2] of the Constitution, and maintained that such powers were *implied* in it. Jefferson held that this doctrine of "implied powers" stretched the Elastic Clause too far. He held that the Elastic Clause ought to be construed strictly and narrowly; Hamilton held that it ought to be construed loosely and liberally. Hence the names "strict-constructionist" and "loose-constructionist," which

Origin of American political parties

[1] In 1898, on the occasion of the Spanish war, taxation by stamps was renewed.

[2] Article I., section viii., clause 18; see above, p. 266.

mark perhaps the most profound and abiding antagonism in the history of American politics.

Practically all will admit that the Elastic Clause, if construed strictly, ought not to be construed *too* narrowly; and, if construed liberally, ought not to be construed *too* loosely. Neither party has been consistent in applying its principles, but in the main we can call Hamilton the founder of the Federalist party, which has had for its successors the National Republicans of 1828, the Whigs of 1833 to 1852, and the Republicans of 1854 to the present time; while we can call Jefferson the founder of the party which called itself Republican from about 1792 to about 1828, and since then has been known as the Democratic party. This is rather a rough description in view of the real complication of the historical facts, but it is an approximation to the truth.

It is not my purpose here to give a sketch of the history of American parties. Such a sketch, if given in due relative proportion, would double the size of this little book, of which the main purpose is to treat of civil government in the United States with reference to its *origins*. But it may here be said in general that the practical questions which have divided the two great parties have been concerned with the powers of the national government as to (1) the

Tariff, Internal Improvements, and National Bank

Tariff; (2) the making of roads, improving rivers and harbours, etc., under the general head of *Internal Improvements;* and (3) the establishment of a *National Bank*, with the national government as partner holding shares in it and taking a leading part in the direction of its affairs. On the question of such a national bank the Democratic party achieved a complete and decisive victory under President Tyler. On the question of internal improvements the opposite party still holds the ground, but most of its details have been settled by the great development of the powers of private enterprise during the past sixty years, and it is not at present a "burning question." The question of the tariff, however, remains to-day as a "burning question," but it is no longer argued on grounds of constitutional law, but on grounds of political economy. Hamilton's construction of the Elastic Clause has to this extent prevailed, and mainly for the reason that a liberal construction of that clause was needed in order to give the national government enough power to restrict the spread of slavery and suppress the great rebellion of which slavery was the exciting cause.

Another political question, more important, if possible, than that of the Tariff, is to-day the question of the reform of the Civil Service; but it is not avowedly made a party question. Twenty

years ago both parties laughed at it; now both try to treat it with a show of respect and to render unto it lip-homage; and the control of the immediate political future probably lies with the party which treats it most seriously. It is a question that was not distinctly foreseen in the days of Hamilton and Jefferson, when the Constitution was made and adopted; otherwise, one is inclined to believe, the framers of the Constitution would have had something to say about it. The question as to the Civil Service arises from the fact that the president has the power of appointing a vast number of petty officials, chiefly postmasters and officials concerned with the collection of the federal revenue. Such officials have properly nothing to do with politics; they are simply the agents or clerks or servants of the national government in conducting its business; and if the business of the national government is to be managed on such ordinary principles of prudence as prevail in the management of private business, such servants ought to be selected for personal merit and retained for life or during good behaviour. It did not occur to our earlier presidents to regard the management of the public business in any other light than this.

Civil service reform

But as early as the beginning of the present century a vicious system was growing up in

New York and Pennsylvania. In those states the appointive offices came to be used as bribes or as rewards for partisan services. By securing votes for a successful candidate, a man with little in his pocket and nothing in particular to do could obtain some office with a comfortable salary. It would be given him as a reward, and some other man, perhaps more competent than himself, would have to be turned out in order to make room for him. A more effective method of driving good citizens "out of politics" could hardly be devised. It called to the front a large class of men of coarse moral fibre who greatly preferred the excitement of speculating in politics to earning an honest living by some ordinary humdrum business. The civil service of these states was seriously damaged in quality, politics degenerated into a wild scramble for offices, salaries were paid to men who did little or no public service in return, and thus the line which separates taxation from robbery was often crossed.

Origin of the "spoils system"

About the same time there grew up an idea that there is something especially democratic, and therefore meritorious, about "rotation in office." Government offices were regarded as plums at which every one ought to be allowed a chance to take a bite. The way was prepared in 1820 by W. H.

"Rotation in office"

Crawford, of Georgia, who succeeded in getting the law enacted that limits the tenure of office for postmasters, revenue collectors, and other servants of the federal government to four years. The importance of this measure was not understood, and it excited very little discussion at the time. The next presidential election which resulted in a change of party was that of Jackson in 1828, and then the methods of New York and Pennsylvania were applied on a national scale. Jackson cherished the absurd belief that the administration of his predecessor Adams had been corrupt, and he turned men out of office with a keen zest. During the forty years between Washington's first inauguration and Jackson's the total number of removals from office was seventy-four, and out of this number five were defaulters. During the first year of Jackson's administration the number of changes made in the civil service was about 2000.[1] Such was the abrupt inauguration upon a national scale of the so-called "spoils system." The phrase originated with W. L. Marcy, of New York, who in a speech in the Senate in 1831 declared that "to the victors belong the spoils." The man who said this of course did not realize that he was making one of the most shameful remarks recorded in history. There was, however, much

The "spoils system" made national

[1] Sumner's *Jackson*, p. 147.

aptness in his phrase, inasmuch as it was a confession that the business of American politics was about to be conducted on principles fit only for the warfare of barbarians.

In the canvass of 1840 the Whigs promised to reform the civil service, and the promise brought them many Democratic votes; but after they had won the election, they followed Jackson's example. The Democrats followed in the same way in 1845, and from that time down to 1885 it was customary at each change of party to make a "clean sweep" of the offices. Soon after the Civil War the evils of the system began to attract serious attention on the part of thoughtful people. The "spoils system" has helped to sustain all manner of abominations, from grasping monopolies and civic jobbery down to political rum-shops. The virus runs through everything, and the natural tendency of the evil is to grow with the growth of the country.

In 1883 Congress passed the Civil Service Act, allowing the president to select a board of examiners on whose recommendation appointments are made. Candidates for office are subjected to an easy competitive examination. The system has worked well in other countries, and under Presidents Arthur and Cleveland it was applied to a considerable part of the civil service. It has also

The Civil Service Act of 1883

been adopted in some states and cities. The opponents of reform object to the examination that it is not always intimately connected with the work of the office,[1] but, even if this were so, the merit of the system lies in its removal of the offices from the category of things known as "patronage." It relieves the president of much needless work and wearisome importunity. The president and the heads of departments appoint (in many cases, through subordinates) about 115,000 officials. It is therefore impossible to know much about their character or competency. It becomes necessary to act by advice, and the advice of an examining board is sure to be much better than the advice of political schemers intent upon getting a salaried office for their needy friends. The examination system has made a fair beginning and will doubtless be gradually improved and made more stringent. Something too has been done toward stopping two old abuses attendant upon political canvasses, — (1) forcing government clerks, under penalty of losing their places, to

[1] The objection that the examination questions are irrelevant to the work of the office is often made the occasion of gross exaggeration. I have given, in Appendix I, an average sample of the examination papers used in the customs service. It is taken from *United States Civil Service Commission. Instructions to Applicants*, etc. Form 117, October, 1900. Washington, Government Printing Office, 1900.

contribute part of their salaries for election purposes; (2) allowing government clerks to neglect their work in order to take an active part in the canvass. Before the reform of the civil service can be completed, however, it will be necessary to repeal Crawford's act of 1820 and make the tenure of postmasters and revenue collectors as secure as that of the chief justice of the United States.

Another political reform which promises excellent results is the adoption by many states of some form of the Australian ballot-system, for the purpose of checking intimidation and bribery at elections. The ballots are printed by the state, and contain the names of all the candidates of all the parties. Against the name of each candidate the party to which he belongs is designated, and against each name there is a small vacant space to be filled with a cross. At the polling-place the ballots are kept in an inclosure behind a railing, and no ballot can be brought outside under penalty of fine or imprisonment.[1] One ballot is nailed against the wall outside the railing, so that it may be read at leisure. The space behind the railing is di-

The Australian ballot-system

[1] This is a brief description of the system lately adopted in Massachusetts. The penalty here mentioned is a fine not exceeding a thousand dollars, or imprisonment not exceeding one year, or both such fine and such imprisonment.

vided into separate booths quite screened from each other. Each booth is provided with a pencil and a convenient shelf on which to write. The voter goes behind the railing, takes the ballot which is handed him, carries it into one of the booths, and marks a cross against the names of the candidates for whom he votes. He then puts his ballot into the box, and his name is checked off on the register of voters of the precinct. This system is very simple, it enables a vote to be given in absolute secrecy, and it keeps "heelers" away from the polls. It is favourable to independence in voting,[1]

[1] It is especially favourable to independence in voting, if the lists of the candidates are placed in a single column, without reference to party (each name, of course, having the proper party designation, "Rep.," "Dem.," "Prohib.," etc., attached to it). In such case it must necessarily take the voter some little time to find and mark each name for which he wishes to vote. If, however, the names of the candidates are arranged according to their party, all the Republicans in one list, all the Democrats in another, etc., this arrangement is much less favourable to independence in voting and much less efficient as a check upon bribery; because the man who votes a straight party ticket will make all his marks in a very short time, while the "scratcher," or independent voter, will consume much more time in selecting his names. Thus people interested in seeing whether a man is voting the straight party ticket or not can form an opinion from the length of time he spends in the booth. It is, therefore, important that the names of all candidates should be printed in a single column.

and it is unfavourable to bribery, because unless the briber can follow his man to the polls and see how he votes, he cannot be sure that his bribe is effective. To make the precautions against bribery complete it will doubtless be necessary to add to the secret ballot the English system of accounting for election expenses. All the funds used in an election must pass through the hands of a small local committee, vouchers must be received for every penny that is expended, and after the election an itemized account must be made out and its accuracy attested under oath before a notary public. This system of accounting has put an end to bribery in England.[1]

Complaints of bribery and corruption have attracted especial attention in the United States during the past few years, and it is highly creditable to the good sense of the people that measures of prevention have been so promptly adopted by so many states. With an independent and uncorrupted ballot, and the civil service taken "out of politics," all other reforms will become far more easily accomplished. These ends will presently be attained. Popular government makes many mistakes, and sometimes it is slow in finding them out; but when

[1] An important step in this direction has been taken in the New York Corrupt Practices Act of April, 1890. See Appendix J.

once it has discovered them it has a way of correcting them. It is the best kind of government in the world, the most wisely conservative, the most steadily progressive, and the most likely to endure.

BIBLIOGRAPHICAL NOTES

It is designed in the bibliographical notes to indicate some authorities to which reference may be made for greater detail than is possible in an elementary work like the present. It is believed that the notes will prove a help to teacher and pupil in special investigations, and to the reader who may wish to make selections from excellent sources for purposes of self-culture. It is hardly necessary to add that it is sometimes worth much to the student to know where valuable information may be obtained, even when it is not practicable to make immediate use of it. . . .

Chapter I. Taxation and Government. — As to the causes of the American Revolution, see my *War of Independence*, Boston, 1889; and as to the weakness of the government of the United States before 1789, see my *Critical Period of American History*, Boston, 1888. As to the causes of the French Revolution, see Paul Lacombe, *The Growth of a People*, N. Y., 1883, and the third volume of Kitchin's *History of France*, London, 1887; also Morse Stephens, *The French Revolution*, vol. i., N. Y., 1887; Taine, *The Ancient Régime*, N. Y., 1876, and *The Revolution*, 2 vols., N. Y. 1880. The student may read with pleasure and profit Dickens's *Tale of Two Cities*. For the student familiar with French, an excellent book is Albert Babeau, *Le Village sous l'ancien Régime*, Paris,

1879; see also Tocqueville, *L'ancien Régime et la Révolution*, 7th ed., Paris, 1866. There is a good sketch of the causes of the French Revolution in the fifth volume of Lecky's *History of England in the Eighteenth Century*, N. Y., 1887; see also Buckle's *History of Civilization*, chaps. xii.–xiv. There is no better commentary on my first chapter than the lurid history of France in the eighteenth century. The strong contrast to English and American history shows us most instructively what we have thus far escaped.

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Chapter III. § 1. The County in its Beginnings. This subject is treated in connection with the township in several of the books above mentioned. See especially Howard, *Local Const. Hist.*

§ 2. The Modern County in Massachusetts. There is a good account in Martin's *Text-Book* above mentioned.

§ 3. The Old Virginia County. The best account is in J. H. U. Studies, III., ii., iii., Edward Ingle, *Virginia Local Institutions*. See also my *Old Virginia and Her Neighbours*, ii. 41–51.

Chapter IV. § 1. Various Local Systems. —

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§ 3. The Representative Township-County System. — J. H. U. Studies, I., iii., Albert Shaw, *Local Government in Illinois;* I., v., Edward Bemis, *Local Government in Michigan and the Northwest;* II., vii., Jesse Macy, *Institutional Beginnings in a Western State* (*Iowa*). For further illustration of one set of institutions supervening upon another, see also V., v., vi., J. G. Bourinot, *Local Government in Canada;* VIII., iii., D. E. Spencer, *Local Government in Wisconsin.*

Chapter V. § 1. Direct and Indirect Government. — The transition from direct to indirect government, as illustrated in the gradual development of a township into a city, may be profitably studied in Quincy's *Municipal History of Boston*, Boston, 1852; and in Winsor's *Memorial History of Boston*, iii. 189–302, Boston, 1881.

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tion by Lujo Brentano, London, 1870; and the histories of the English Constitution, especially those of Gneist, Stubbs, Taswell-Langmead, and Hannis Taylor.

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Chapter VI. The State. — For the founding of the several colonies, their charters, etc., the student may profitably consult the learned monographs in Winsor's *Narrative and Critical History of America*, 8 vols., Boston, 1886–89. A popular account, quite full in details, is given in Lodge's *Short History of the English Colonies in America*, N. Y., 1881. There is a

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Among the most valuable books ever written on the proper sphere and duties of civil government are Herbert Spencer's *Social Statics*, London, 1851; *The Study of Sociology*, 9th ed., London, 1880; *The Man* versus *The State*, London, 1884; they are all reprinted by D. Appleton & Co., New York. The views expressed in *Social Statics* with regard to the tenure of land are regarded as unsound by many who are otherwise in entire sympathy with Mr. Spencer's views, and they are ably criticised in Bonham's *Industrial Liberty*, N. Y., 1888. A book of great merit, which ought to be reprinted as it is now not easy to obtain, is Toulmin Smith's *Local Self-Government and Centralization*, London, 1851. Its point of view is sufficiently indicated by the following admirable pair of maxims (p. 12):—

"Local Self-Government *is that system of government under which the greatest number of minds, knowing the most, and having the fullest opportunities of knowing it, about the special matter in hand, and hav-*

ing the greatest interest in its well-working, have the management of it, or control over it.

"CENTRALIZATION *is that system of government under which the smallest number of minds, and those knowing the least, and having the fewest opportunities of knowing it, about the special matter in hand, and having the smallest interest in its well-working, have the management of it, or control over it.*"

An immense amount of wretched misgovernment would be avoided if all legislators and all voters would engrave these wholesome definitions upon their minds. In connection with the books just mentioned much detailed and valuable information may be found in the collections of essays edited by J. W. Probyn, *Local Government and Taxation* [in various countries], London, 1875; *Local Government* and *Taxation in the United Kingdom*, London, 1882. See also R. T. Ely's *Taxation in American States and Cities*, N. Y., 1889.

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the Political History of the United States, 3 vols., Chicago, 1882–84. The numerous articles in it relating to American history are chiefly by Alexander Johnston, whose mastery of his subject was simply unrivalled. See also Gamaliel Bradford's *Lessons of Popular Government*, New York, 1899. For a manual of constitutional law, Cooley's *General Principles of Constitutional Law in the United States of America*, Boston, 1880, is to be recommended. The reader may fitly supplement his general study of civil government by the little book of E. P. Dole, *Talks about Law: a Popular Statement of What our Law is and How it is to be Administered*, Boston, 1887.

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I would here call attention to some publications by the Directors of the Old South Studies in History and Politics, — first, *The Constitution of the United States, with Historical and Bibliographical Notes and Outlines for Study*, prepared by E. D. Mead (Directors of the Old South Work, 25 cents); secondly, the *Old South Leaflets*, furnished to schools and the trade by the

same publishers, at 5 cents a copy or $4.00 a hundred. These leaflets are for the most part reprints of important original papers, furnished with valuable historical and bibliographical notes. The titles of the earliest issues in this series are as follows: 1. The Constitution of the United States; 2. The Articles of Confederation; 3. The Declaration of Independence; 4. Washington's Farewell Address; 5. Magna Charta; 6. Vane's "Healing Question;" 7. Charter of Massachusetts Bay, 1629; 8. Fundamental Orders of Connecticut, 1639; 9. Franklin's Plan of Union, 1754; 10. Washington's Inaugurals; 11. Lincoln's Inaugurals and Emancipation Proclamation; 12. The Federalist, Nos. 1 and 2; 13. The Ordinance of 1787; 14. The Constitution of Ohio; 15. Washington's "Legacy;" 16. Washington's Letter to Benjamin Harrison, Governor of Virginia, on the Opening of Communication with the West; 17. Verrazano's Voyage, 1524; 18. Federal Constitution of the Swiss Confederation. (Additions are made to this list every year.)

Howard Preston's *Documents Illustrative of American History*, N. Y., 1886, contains the following: First Virginia Charter, 1606; Second Virginia Charter, 1609; Third Virginia Charter, 1612; Mayflower Compact, 1620; Massachusetts Charter, 1629; Maryland Charter, 1632; Fundamental Orders of Connecticut, 1639; New England Confederation, 1643; Connecticut Charter, 1662; Rhode Island Charter, 1663; Pennsylvania Charter, 1681; Penn's Plan of Union, 1697; Georgia Charter, 1732; Franklin's Plan of Union, 1754; Declaration of Rights, 1765; Declaration of Rights, 1774; Non-

Importation Agreement, 1774; Virginia Bill of Rights, 1776; Declaration of Independence, 1776; Articles of Confederation, 1777; Treaty of Peace, 1783; Northwest Ordinance, 1787; Constitution of the United States, 1787; Alien and Sedition Laws, 1798; Virginia Resolutions, 1798; Kentucky Resolutions, 1798; Kentucky Resolutions, 1799; Nullification Ordinance, 1832; Ordinance of Secession, 1860; South Carolina Declaration of Independence, 1860; Emancipation Proclamation, 1863.

See also Poore's *Federal and State Constitutions, Colonial Charters, and other Organic Laws of the United States*, 2 vols., Washington, 1877.

The series of essays entitled *The Federalist*, written by Hamilton, Madison, and Jay, in 1787–88, while the ratification of the Constitution was in question, will always remain indispensable as an introduction to the thorough study of the principles upon which our federal government is based. The most recent edition is by H. C. Lodge, N. Y., 1888. For the systematic and elaborate study of the Constitution, see Foster's *References to the Constitution of the United States*, a little pamphlet of 50 pages published by the "Society for Political Education," 330 Pearl St., New York, 1890, price 25 cents.

For very pleasant and profitable reading, in connection with the formation and interpretation of the Constitution, and the political history of our country from 1763 to 1850, we have the American Statesmen Series, edited by J. T. Morse, and published by Houghton, Mifflin & Co., Boston, 1882–1900: *Benjamin Franklin*, by J. T. Morse; *Patrick Henry*, by

M. C. Tyler; *Samuel Adams*, by J. K. Hosmer; *George Washington*, by H. C. Lodge, 2 vols.; *John Adams* and *Thomas Jefferson*, by J. T. Morse; *Alexander Hamilton*, by H. C. Lodge; *Gouverneur Morris*, by T. Roosevelt; *James Madison*, by S. H. Gay; *James Monroe*, by D. C. Gilman; *Albert Gallatin*, by J. A. Stevens; *John Randolph*, by H. Adams; *John Jay*, by G. Pellew; *John Marshall*, by A. B. Magruder; *John Quincy Adams*, by J. T. Morse; *John C. Calhoun*, by H. von Holst; *Andrew Jackson*, by W. G. Sumner; *Martin Van Buren*, by E. M. Shepard; *Henry Clay*, by C. Schurz, 2 vols.; *Daniel Webster*, by H. C. Lodge; *Thomas H. Benton*, by T. Roosevelt; *Lewis Cass*, by Prof. Andrew C. McLaughlin; *Abraham Lincoln*, by John T. Morse, 2 vols.; *William H. Seward*, by Thornton K. Lothrop; *Salmon P. Chase*, by Albert Bushnell Hart; *Charles Francis Adams*, by C. F. Adams, Jr.; *Charles Sumner*, by Moorfield Storey; *Thaddeus Stevens*, by Samuel W. McCall.

The arguments in favour of protectionism are set forth in Bowen's *American Political Economy*, last ed., N. Y., 1870; the arguments in favour of free trade are set forth in Perry's *Political Economy*, 19th ed., N. Y., 1887; and for an able and impartial historical survey, Taussig's *Tariff History of the United States*, N. Y., 1888, may be recommended. For a lucid view of currency, see Jevons's *Money and the Mechanism of Exchange*, N. Y., 1875.

A useful work on the Australian method of voting is Wigmore's *The Australian Ballot System*, 2d ed., Boston, 1890.

APPENDIX A

THE ARTICLES OF CONFEDERATION

Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE I. — The style of this Confederacy shall be, "The United States of America."

ART. II. — Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled.

ART. III. — The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ART. IV. — The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and

fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State, and shall enjoy therein all the privileges of trade and commerce subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction shall be laid by any State on the property of the United States or either of them. If any person guilty of, or charged with, treason, felony, or other high misdemeanour in any State shall flee from justice and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence. Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. V. — For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the Legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year. No State shall be represented in Congress by less than two, nor by more than seven members;

and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States for which he, or another for his benefit, receives any salary, fees, or emolument of any kind. Each State shall maintain its own delegates in any meeting of the States and while they act as members of the Committee of the States. In determining questions in the United States, in Congress assembled, each State shall have one vote. Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonment during the time of their going to and from, and attendance on, Congress, except for treason, felony, or breach of the peace.

ART. VI. — No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States, in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for

which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States, in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessel of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defence of such State or its trade, nor shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use in public stores a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration

of war by the United States, in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States, in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

ART. VII. — When land forces are raised by any State for the common defence, all officers of or under the rank of Colonel shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ART. VIII. — All charges of war, and all other expenses that shall be incurred for the common defence, or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States, within the time agreed upon by the United States, in Congress assembled.

ART. IX. — The United States, in Congress as-

sembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth Article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatever; of establishing rules for deciding, in all cases, what captures on land and water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States, in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other

State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the

security of the parties concerned; provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating post-offices from one State to another, throughout all the United States,

and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States, in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State, and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the

United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by

the votes of a majority of the United States, in Congress assembled.

The Congress of the United States shall have power to adjourn at any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations as in their judgment require secrecy; and the yeas and nays of the delegates of each State, on any question, shall be entered on the journal when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal except such parts as are above excepted, to lay before the Legislatures of the several States.

ART. X. — The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ART. XI. — Canada, acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ART. XII. — All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. XIII. — Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

AND WHEREAS it hath pleased the great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress to approve of, and to authorize us to ratify, the said Articles of Confederation and perpetual Union, know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the

United States, in Congress assembled, on all questions which by the said Confederation are submitted to them; and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

APPENDIX B

THE CONSTITUTION OF THE UNITED STATES

Preamble.[1]

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I. Legislative Department.[2]

Section I. Congress in General.

All legislative powers herein granted shall be vested

[1] Compare this Preamble with Confed. Art. I. and III.

[2] Compare Art. I. §§ i.-vii. with Confed. Art. V.

in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section II. House of Representatives.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island and Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight,

Delaware one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

Section III. Senate.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall

be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honour, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

Section IV. Both Houses.

1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section V. The Houses Separately.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section VI. Privileges and Disabilities of Members.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the Treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same;

and for any speech or debate in either house they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section VII. Mode of Passing Laws.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been

presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section VIII. Powers granted to Congress.[1]

The Congress shall have power:

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and

[1] Compare §§ viii. and ix. with Confed. Art. IX.; clause 1 of § viii. with Confed. Art. VIII.; and clause 12 of § viii. with Confed. Art. VII.

of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post-offices and post-roads;

8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas and offences against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.[1]

Section IX. Powers denied to the United States.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or ex post facto law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

[1] This is the Elastic Clause in the interpretation of which arose the original and fundamental division of political parties. See above, pp. 266, 281.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the Treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

Section X. Powers denied to the States.[1]

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports,

[1] Compare § x. with Confed. Art. VI.

shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

Article II. Executive Department.[1]

Section I. President and Vice-President.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. [The electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and trans-

[1] Compare Art. II. with Confed. Art. X.

mit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.][1]

4. The Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption

[1] This clause of the Constitution has been amended. See Amendments, Art. XII.

of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he may have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

8. Before he enter on the execution of his office he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States."

Section II. Powers of the President.

1. The President shall be Commander-in-chief of the Army and Navy of the United States, and of the militia of the several States when called into the

actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section III. Duties of the President.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn

them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section IV. Impeachment.

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanours.

ARTICLE III. JUDICIAL DEPARTMENT.[1]

Section I. United States Courts.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Section II. Jurisdiction of the United States Courts.

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall

[1] Compare Art. III. with the first three paragraphs of Confed. Art. IX.

be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.[1]

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section III. Treason.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

[1] This clause has been amended. See Amendments, Art. XI.

Article IV. The States and the Federal Government.[1]

Section I. State Records.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section II. Privileges of Citizens, etc.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labour in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.[2]

[1] Compare Art. IV. with Confed. Art. IV.

[2] This clause has been cancelled by Amendment XIII., which abolishes slavery.

Section III. New States and Territories.[1]

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

Section IV. Guarantee to the States.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

Article V. Power of Amendment.[1]

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part

[1] Compare § iii. with Confed. Art. XI.

[2] Compare Art. V. with Confed. Art. XIII.

of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, provided that no amendments which may be made prior to the year one thousand eight hundred and eight [illegible] in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI. PUBLIC DEBT, SUPREMACY OF THE CONSTITUTION, OATH OF OFFICE, RELIGIOUS TEST.

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a

[1] Compare clause 1 with Confed. Art. XII.

qualification to any office or public trust under the United States.[1]

ARTICLE VII. RATIFICATION OF THE CONSTITUTION.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in convention by the unanimous consent of the States present,[2] the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

George Washington, President, and Deputy from VIRGINIA.

NEW HAMPSHIRE — John Langdon, Nicholas Gilman.

MASSACHUSETTS — Nathaniel Gorham, Rufus King.

CONNECTICUT — William Samuel Johnson, Roger Sherman.

NEW YORK — Alexander Hamilton.

NEW JERSEY — William Livingston, David Brearly, William Patterson, Jonathan Dayton.

PENNSYLVANIA — Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas

[1] Compare clauses 2 and 3 with Confed. Art. XIII. and addendum, "And whereas," etc.

[2] Rhode Island sent no delegates to the Federal Convention.

Fitzsimons, Jared Ingersoll, James Wilson, Gouverneur Morris.

DELAWARE — George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom.

MARYLAND — James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll.

VIRGINIA — John Blair, James Madison, Jr.

NORTH CAROLINA — William Blount, Richard Dobbs Spaight, Hugh Williamson.

SOUTH CAROLINA — John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler.

GEORGIA — William Few, Abraham Baldwin.

Attest: William Jackson, *Secretary.*

AMENDMENTS

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in

[1] Amendments I. to X. were proposed by Congress, Sept. 25, 1789, and declared in force Dec. 15, 1791.

any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have com-

pulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.[1]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

ARTICLE XI.[2]

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

[1] Compare Amendment X. with Confed. Art. II.

[2] Proposed by Congress March 5, 1794, and declared in force Jan. 8, 1798.

Article XII.[1]

1. The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the

[1] Proposed by Congress Dec. 12, 1803, and declared in force Sept. 25, 1804.

right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Article XIII.[1]

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

Article XIV.[2]

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citi-

[1] Proposed by Congress Feb. 1, 1865, and declared in force Dec. 18, 1865.

[2] Proposed by Congress June 16, 1866, and declared in force July 28, 1868.

zens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the ene-

mies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Article XV.[1]

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, colour, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

FRANKLIN'S SPEECH ON THE LAST DAY OF THE CONSTITUTIONAL CONVENTION[2]

Monday, *September* 17. *In Convention* — The engrossed Constitution being read, Doctor Franklin rose

[1] Proposed by Congress, Feb. 26, 1869, and declared in force, March 30, 1870.

[2] From Madison's "Journal," in Eliot's *Debates*, vol. v. p. 554.

with a speech in his hand, which he had reduced to writing for his own convenience, and which Mr. Wilson read in the words following: —

"Mr. President: I confess that there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them. For, having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects which I once thought right, but found to be otherwise. It is therefore that, the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men, indeed, as well as most sects in religion, think themselves in possession of all truth, and that wherever others differ from them it is so far error. Steele, a Protestant, in a dedication tells the Pope that the only difference between our churches, in their opinions of the certainty of their doctrines, is, 'the Church of Rome is infallible, and the Church of England is never in the wrong.' But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain French lady who, in a dispute with her sister, said, 'I don't know how it happens, sister, but I meet with nobody but myself that is always in the right — *il n'y a que moi qui a toujours raison.*' In these sentiments, sir, I agree to this Constitution, with all its faults, if they are such, because I think a General Government necessary for us, and there is no form of government but what may be a blessing to the people if well administered; and believe further, that this is likely to be well administered

for a course of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other. I doubt, too, whether any other Convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It, therefore, astonishes me, sir, to find this system approaching so near to perfection as it does: and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded, like those of the builders of Babel, and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, sir, to this Constitution because I expect no better, and because I am not sure that it is not the best. The opinions I have had of its errors I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born and here they shall die. If every one of us, in returning to our constituents, were to report the objections he has had to it, and endeavour to gain partisans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects and great advantages resulting naturally in our favour among foreign nations as well as among ourselves, from our real or apparent unanimity. Much of the strength and efficiency of any government, in procuring and securing

happiness to the people, depends on opinion — on the general opinion of the goodness of the government as well as of the wisdom and integrity of its governors. I hope, therefore, that for our own sakes, as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress and confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts and endeavours to the means of having it well administered. On the whole, sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it would, with me, on this occasion doubt a little of his own infallibility, and, to make manifest our unanimity, put his name to this instrument."

He then moved that the Constitution be signed by the members, and offered the following as a convenient form, viz.: "Done in Convention by the unanimous consent of *the States* present the seventeenth of September, etc. In witness whereof we have hereunto subscribed our names." This ambiguous form had been drawn up by Mr. Gouverneur Morris, in order to gain the dissenting members, and put into the hands of Doctor Franklin, that it might have the better chance of success. [Considerable discussion followed, Randolph and Gerry stating their reasons for refusing to sign the Constitution. Mr. Hamilton expressed his anxiety that every member should sign. A few characters of consequence, he said, by opposing or even refusing to sign the Constitution, might do infinite mischief by kindling the latent sparks that lurk under an enthusiasm in favour of the Convention which may soon subside. No man's ideas were more

remote from the plan than his own were known to be; but is it possible to deliberate between anarchy and convulsion on one side, and the chance of good to be expected from the plan on the other? This discussion concluded, the Convention voted that its journal and other papers should be retained by the President, subject to the order of Congress.] The members then proceeded to sign the Constitution as finally amended. The Constitution being signed by all the members except Mr. Randolph, Mr. Mason, and Mr. Gerry, who declined giving it the sanction of their names, the Convention dissolved itself by an adjournment sine die.

Whilst the last members were signing, Doctor Franklin, looking towards the President's chair, at the back of which a rising sun happened to be painted, observed to a few members near him that painters had found it difficult to distinguish in their art a rising from a setting sun. I have, said he, often and often, in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting; but now, at length, I have the happiness to know that it is a rising, and not a setting, sun.

APPENDIX C

MAGNA CHARTA,[1]

OR THE GREAT CHARTER OF KING JOHN, GRANTED JUNE 15, A. D. 1215.

JOHN, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy, Aquitaine, and Count of Anjou, to his Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Governors, Officers, and to all Bailiffs, and his faithful subjects, greeting. Know ye, that we, in the presence of God, and for the salvation of our soul, and the souls of all our ancestors and heirs, and unto the honour of God and the advancement of Holy Church, and amendment of our Realm, by advice of our venerable Fathers, Stephen, Archbishop of Canterbury, Primate of all England and Cardinal of the Holy Roman Church; Henry, Archishop of Dublin; William, of London; Peter, of Winchester; Jocelin of Bath and Glastonbury; Hugh, of Lincoln; Walter, of Worcester; William, of Coventry; Benedict, of Rochester — Bishops: of Master Pandulph, Sub-Deacon and Familiar of our Lord the Pope; Brother Aymeric, Master of the Knights-Templars in England; and of the noble Persons, William Marescall, Earl of Pembroke; William, Earl of Salisbury; William, Earl of Warren; William, Earl of Arundel; Alan de Galloway, Constable of Scotland; Warin FitzGerald, Peter FitzHerbert, and Hubert de Burgh,

[1] I have, by permission, reproduced the *Old South Leaflet*, with its notes, etc., in full.

Seneschal of Poitou; Hugh de Neville, Matthew FitzHerbert, Thomas Basset, Alan Basset, Philip of Albiney, Robert de Roppell, John Mareschal, John FitzHugh, and others, our liegemen, have, in the first place, granted to God, and by this our present Charter confirmed, for us and our heirs for ever: —

1. That the Church of England shall be free, and have her whole rights, and her liberties inviolable; and we will have them so observed, that it may appear thence that the freedom of elections, which is reckoned chief and indispensable to the English Church, and which we granted and confirmed by our Charter, and obtained the confirmation of the same from our Lord the Pope Innocent III., before the discord between us and our barons, was granted of mere free will; which Charter we shall observe, and we do will it to be faithfully observed by our heirs for ever.

2. We also have granted to all the freemen of our kingdom, for us and for our heirs for ever, all the underwritten liberties, to be had and holden by them and their heirs, of us and our heirs for ever: If any of our earls, or barons, or others, who hold of us in chief by military service, shall die, and at the time of his death his heir shall be of full age, and owe a relief, he shall have his inheritance by the ancient relief — that is to say, the heir or heirs of an earl, for a whole earldom, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and whoever oweth less shall give less, according to the ancient custom of fees.

3. But if the heir of any such shall be under age,

and shall be in ward, when he comes of age he shall have his inheritance without relief and without fine.

4. The keeper of the land of such an heir being under age, shall take of the land of the heir none but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods; and if we commit the custody of any such lands to the sheriff, or any other who is answerable to us for the issues of the land, and he shall make destruction and waste of the lands which he hath in custody, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall answer for the issues to us, or to him to whom we shall assign them; and if we sell or give to any one the custody of any such lands, and he therein make destruction or waste, he shall lose the same custody, which shall be committed to two lawful and discreet men of that fee, who shall in like manner answer to us as aforesaid.

5. But the keeper, so long as he shall have the custody of the land, shall keep up the houses, parks, warrens, ponds, mills, and other things pertaining to the land, out of the issues of the same land; and shall deliver to the heir, when he comes of full age, his whole land, stocked with ploughs and carriages, according as the time of wainage shall require, and the issues of the land can reasonably bear.

6. Heirs shall be married without disparagement, and so that before matrimony shall be contracted, those who are near in blood to the heir shall have notice.

7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage and

inheritance; nor shall she give anything for her dower, or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the mansion house of her husband forty days after his death, within which time her dower shall be assigned.

8. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband; but yet she shall give security that she will not marry without our assent, if she hold of us; or without the consent of the lord of whom she holds, if she hold of another.

9. Neither we nor our bailiffs shall seize any land or rent for any debt so long as the chattels of the debtor are sufficient to pay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor has sufficient to pay the debt; and if the principal debtor shall fail in the payment of the debt, not having wherewithal to pay it, then the sureties shall answer the debt; and if they will they shall have the lands and rents of the debtor, until they shall be satisfied for the debt which they paid for him, unless the principal debtor can show himself acquitted thereof against the said sureties.

10. If any one have borrowed anything of the Jews, more or less, and die before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold; and if the debt falls into our hands, we will only take the chattel mentioned in the deed.

11. And if any one shall die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if the deceased left children under age, they

shall have necessaries provided for them, according to the tenement of the deceased; and out of the residue the debt shall be paid, saving, however, the service due to the lords, and in like manner shall it be done touching debts due to others than the Jews.

12. *No scutage or aid* [1] *shall be imposed in our kingdom, unless by the general council of our kingdom;* except for ransoming our person, making our eldest son a knight, and once for marrying our eldest daughter; and for these there shall be paid no more than a reasonable aid. In like manner it shall be concerning the aids of the City of London.

13. And the City of London shall have all its ancient liberties and free customs, as well by land as by water: furthermore, we will and grant that all other cities and boroughs, and towns and ports, shall have all their liberties and free customs.

14. *And for holding the general council of the kingdom concerning the assessment of aids, except in the three cases aforesaid, and for the assessing of scutages, we shall cause to be summoned the archbishops, bishops, abbots, earls, and greater barons of the realm, singly by our letters. And furthermore, we shall cause to be summoned generally, by our sheriffs and bailiffs, all others who hold of us in chief, for a certain day, that is to say, forty days before their meeting at least, and to a certain place; and in all letters of such summons we will declare the cause of such summons. And summons being thus made, the business shall*

[1] In the time of the feudal system *scutage* was a direct tax in commutation for military service; *aids* were direct taxes paid by the tenant to his lord for ransoming his person if taken captive, and for helping defray the expenses of knighting his eldest son and marrying his eldest daughter.

proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

15. We will not for the future grant to any one that he may take aid of his own free tenants, unless to ransom his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for this there shall be only paid a reasonable aid.

16. No man shall be distrained to perform more service for a knight's fee, or other free tenement, than is due from thence.

17. Common pleas shall not follow our court, but shall be holden in some place certain.

18. Trials upon the Writs of Novel Disseisin,[1] and of Mort d'ancestor,[2] and of Darrein Presentment,[3] shall not be taken but in their proper counties, and after this manner: We, or if we should be out of the realm, our chief justiciary, will send two justiciaries through every county four times a year, who, with four knights of each county, chosen by the county, shall hold the said assizes[4] in the county, on the day, and at the place appointed.

19. And if any matters cannot be determined on the day appointed for holding the assizes in each

[1] Dispossession.

[2] Death of the ancestor; that is, in cases of disputed succession to land.

[3] Last presentation to a benefice.

[4] The word Assize here means "an assembly of knights or other substantial persons, held at a certain time and place where they sit with the Justice. 'Assisa' or 'Assize' is also taken for the court, place, or time at which the writs of Assize are taken." — *Thompson's Notes.*

county, so many of the knights and freeholders as have been at the assizes aforesaid shall stay to decide them as is necessary, according as there is more or less business.

20. A freeman shall not be amerced for a small offence, but only according to the degree of the offence ; and for a great crime according to the heinousness of it, saving to him his contenement ; [1] and after the same manner a merchant, saving to him his merchandise. And a villein shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy ; and none of the aforesaid amerciaments shall be assessed but by the oath of honest men in the neighbourhood.

21. Earls and barons shall not be amerced but by their peers, and after the degree of the offence.

22. No ecclesiastical person shall be amerced for his lay tenement, but according to the proportion of the others aforesaid, and not according to the value of his ecclesiastical benefice.

23. Neither a town nor any tenant shall be distrained to make bridges or embankments, unless that anciently and of right they are bound to do it.

24. No sheriff, constable, coroner, or other our bailiffs, shall hold " Pleas of the Crown." [2]

25. All counties, hundreds, wapentakes, and trethings, shall stand at the old rents, without any increase, except in our demesne manors.

26. If any one holding of us a lay fee die, and the

[1] " That by which a person subsists and which is essential to his rank in life."

[2] These are suits conducted in the name of the Crown against criminal offenders.

sheriff, or our bailiffs, show our letters patent of summons for debt which the dead man did owe to us, it shall be lawful for the sheriff or our bailiff to attach and register the chattels of the dead, found upon his lay fee, to the amount of the debt, by the view of lawful men, so as nothing be removed until our whole clear debt be paid; and the rest shall be left to the executors to fulfil the testament of the dead; and if there be nothing due from him to us, all the chattels shall go to the use of the dead, saving to his wife and children their reasonable shares.[1]

27. If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by view of the Church, saving to every one his debts which the deceased owed to him.

28. No constable or bailiff of ours shall take corn or other chattels of any man unless he presently give him money for it, or hath respite of payment by the good-will of the seller.

29. No constable shall distrain any knight to give money for castle-guard, if he himself will do it in his person, or by another able man, in case he cannot do it through any reasonable cause. And if we have carried or sent him into the army, he shall be free from

[1] A person's goods were divided into three parts, of which one went to his wife, another to his heirs, and a third he was at liberty to dispose of. If he had no child, his widow had half; and if he had children, but no wife, half was divided amongst them. These several sums were called "reasonable shares." Through the testamentary jurisdiction they gradually acquired, the clergy often contrived to get into their own hands all the residue of the estate without paying the debts of the estate.

such guard for the time he shall be in the army by our command.

30. No sheriff or bailiff of ours, or any other, shall take horses or carts of any freeman for carriage, without the assent of the said freeman.

31. Neither shall we nor our bailiffs take any man's timber for our castles or other uses, unless by the consent of the owner of the timber.

32. We will retain the lands of those convicted of felony only one year and a day, and then they shall be delivered to the lord of the fee.[1]

33. All kydells[2] (wears) for the time to come shall be put down in the rivers of Thames and Medway, and throughout all England, except upon the sea-coast.

34. The writ which is called *præcipe*, for the future, shall not be made out to any one, of any tenement, whereby a freeman may lose his court.

35. There shall be one measure of wine and one of ale through our whole realm; and one measure of corn, that is to say, the London quarter; and one breadth of dyed cloth, and russets, and haberjects, that is to say, two ells within the lists; and it shall be of weights as it is of measures.

[1] All forfeiture for felony has been abolished by the 33 and 34 Vic., c. 23. It seems to have originated in the destruction of the felon's property being part of the sentence, and this "waste" being commuted for temporary possession by the Crown.

[2] The purport of this was to prevent inclosures of common property, or committing a "Purpresture." These wears are now called "kettles" or "kettle-nets" in Kent and Cornwall.

36. *Nothing from henceforth shall be given or taken for a writ of inquisition of life or limb, but it shall be granted freely, and not denied.*[1]

37. If any do hold of us by fee-farm, or by socage, or by burgage, and he hold also lands of any other by knight's service, we will not have the custody of the heir or land, which is holden of another man's fee by reason of that fee-farm, socage,[2] or burgage; neither will we have the custody of the fee-farm, or socage, or burgage, unless knight's service was due to us out of the same fee-farm. We will not have the custody of an heir, nor of any land which he holds of another by knight's service, by reason of any petty serjeanty[3] by which he holds of us, by the service of paying a knife, an arrow, or the like.

38. No bailiff from henceforth shall put any man to his law[4] upon his own bare saying, without credible witnesses to prove it.

39. *No freeman shall be taken or imprisoned, or disseised, or outlawed, or banished, or any ways destroyed, nor will we pass upon him, nor will we send upon him,*

[1] This important writ, or "writ concerning hatred and malice," may have been the prototype of the writ of *habeas corpus*, and was granted for a similar purpose.

[2] "Socage" signifies lands held by tenure of performing certain inferior offices in husbandry, probably from the old French word *soc*, a plough-share.

[3] The tenure of giving the king some small weapon of war in acknowledgment of lands held.

[4] Equivalent to putting him to his oath. This alludes to the Wager of Law, by which a defendant and his eleven supporters or "compurgators" could swear to his non-liability, and this amounted to a verdict in his favour.

unless by the lawful judgment of his peers, or by the law of the land.

40. *We will sell to no man, we will not deny to any man, either justice or right.*

41. All merchants shall have safe and secure conduct, to go out of, and to come into England, and to stay there and to pass as well by land as by water, for buying and selling by the ancient and allowed customs, without any unjust tolls; except in time of war, or when they are of any nation at war with us. And if there be found any such in our land, in the beginning of the war, they shall be attached, without damage to their bodies or goods, until it be known unto us, or our chief justiciary, how our merchants be treated in the nation at war with us; and if ours be safe there, the others shall be safe in our dominions.

42. It shall be lawful, for the time to come, for any one to go out of our kingdom, and return safely and securely by land or by water, saving his allegiance to us; unless in time of war, by some short space, for the common benefit of the realm, except prisoners and outlaws, according to the law of the land, and people in war with us, and merchants who shall be treated as is above mentioned.[1]

43. If any man hold of any escheat,[2] as of the

[1] The Crown has still technically the power of confining subjects within the kingdom by the writ "ne exeat regno," though the use of the writ is rarely resorted to.

[2] The word *escheat* is derived from the French *escheoir*, to return or happen, and signifies the return of an estate to a lord, either on failure of tenant's issue or on his committing felony. The abolition of feudal tenures by the Act of

honour of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which be in our hands, and are baronies, and die, his heir shall give no other relief, and perform no other service to us than he would to the baron, if it were in the baron's hand; and we will hold it after the same manner as the baron held it.

44. Those men who dwell without the forest from henceforth shall not come before our justiciaries of the forest, upon common summons, but such as are impleaded, or are sureties for any that are attached for something concerning the forest.[1]

45. We will not make any justices, constables, sheriffs, or bailiffs, but of such as know the law of the realm and mean duly to observe it.

46. All barons who have founded abbeys, which they hold by charter from the kings of England, or by ancient tenure, shall have the keeping of them, when vacant, as they ought to have.

47. All forests that have been made forests in our time shall forthwith be disforested; and the same shall be done with the water-banks that have been fenced in by us in our time.

48. All evil customs concerning forests, warrens, foresters, and warreners, sheriffs and their officers, water-banks and their keepers, shall forthwith be inquired into in each county, by twelve sworn knights of the same county, chosen by creditable persons of

Charles II. (12 Charles II. c. 24) rendered obsolete this part and many other parts of the Charter.

[1] The laws for regulating the royal forests, and administering justice in respect of offences committed in their precincts, formed a large part of the law.

the same county; and within forty days after the said inquest be utterly abolished, so as never to be restored: so as we are first acquainted therewith, or our justiciary, if we should not be in England.

49. We will immediately give up all hostages and charters delivered unto us by our English subjects, as securities for their keeping the peace, and yielding us faithful service.

50. We will entirely remove from their bailiwicks the relations of Gerard de Atheyes, so that for the future they shall have no bailiwick in England; we will also remove Engelard de Cygony, Andrew, Peter, and Gyon, from the Chancery; Gyon de Cygony, Geoffrey de Martyn, and his brothers; Philip Mark, and his brothers, and his nephew, Geoffrey, and their whole retinue.

51. As soon as peace is restored, we will send out of the kingdom all foreign knights, cross-bowmen, and stipendiaries, who are come with horses and arms to the molestation of our people.

52. If any one has been dispossessed or deprived by us, without the lawful judgment of his peers, of his lands, castles, liberties, or right, we will forthwith restore them to him; and if any dispute arise upon this head, let the matter be decided by the five-and-twenty barons hereafter mentioned, for the preservation of the peace. And for all those things of which any person has, without the lawful judgment of his peers, been dispossessed or deprived, either by our father King Henry, or our brother King Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite till the term usually allowed the crusaders;

excepting those things about which there is a plea depending, or whereof an inquest hath been made, by our order before we undertook the crusade; but as soon as we return from our expedition, or if perchance we tarry at home and do not make our expedition, we will immediately cause full justice to be administered therein.

53. The same respite we shall have, and in the same manner, about administering justice, disafforesting or letting continue the forests, which Henry our father, and our brother Richard, have afforested; and the same concerning the wardship of the lands which are in another's fee, but the wardship of which we have hitherto had, by reason of a fee held of us by knight's service; and for the abbeys founded in any other fee than our own, in which the lord of the fee says he has a right; and when we return from our expedition, or if we tarry at home, and do not make our expedition, we will immediately do full justice to all the complainants in this behalf.

54. No man shall be taken or imprisoned upon the appeal[1] of a woman, for the death of any other than her husband.

55. All unjust and illegal finds made by us, and all amerciaments imposed unjustly and contrary to the law of the land, shall be entirely given up, or else be

[1] An *Appeal* here means an "accusation." The appeal here mentioned was a suit for a penalty in which the plaintiff was a relation who had suffered through a murder or manslaughter. One of the incidents of this "Appeal of Death" was the Trial by Battle. These Appeals and Trial by Battle were not abolished before the passing of the Act 59 Geo. III., c. 46.

left to the decision of the five-and-twenty barons hereafter mentioned for the preservation of the peace, or of the major part of them, together with the aforesaid Stephen, Archbishop of Canterbury, if he can be present, and others whom he shall think fit to invite; and if he cannot be present, the business shall notwithstanding go on without him; but so that if one or more of the aforesaid five-and-twenty barons be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair, and others be chosen in their room, out of the said five-and-twenty, and sworn by the rest to decide the matter.

56. If we have disseised or dispossessed the Welsh of any lands, liberties, or other things, without the legal judgment of their peers, either in England or in Wales, they shall be immediately restored to them; and if any dispute arise upon this head, the matter shall be determined in the Marches by the judgment of their peers; for tenements in England according to the law of England, for tenements in Wales according to the law of Wales, for tenements of the Marches according to the law of the Marches: the same shall the Welsh do to us and our subjects.

57. As for all those things of which a Welshman hath, without the lawful judgment of his peers, been disseised or deprived of by King Henry our father, or our brother King Richard, and which we either have in our hands or others are possessed of, and we are obliged to warrant it, we shall have a respite till the time generally allowed the crusaders; excepting those things about which a suit is depending, or whereof an inquest has been made by our order, before we undertook the crusade; but when we return, or if we stay at home

without performing our expedition, we will immediately do them full justice according to the laws of the Welsh and of the parts before mentioned.

58. We will without delay dismiss the son of Llewellin, and all the Welsh hostages, and release them from the engagements they have entered into with us for the preservation of the peace.

59. We will treat with Alexander, King of Scots, concerning the restoring his sisters and hostages, and his right and liberties, in the same form and manner as we shall do to the rest of our barons of England; unless by the charters which we have from his father, William, late King of Scots, it ought to be otherwise; and this shall be left to the determination of his peers in our court.

60. All the aforesaid customs and liberties, which we have granted to be holden in our kingdom, as much as it belongs to us, all people of our kingdom, as well clergy as laity, shall observe, as far as they are concerned, towards their dependents.

61. And whereas, for the honour of God and the amendment of our kingdom, and for the better quieting the discord that has arisen between us and our barons, we have granted all these things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the underwritten security, namely that the barons may choose five-and-twenty barons of the kingdom, whom they think convenient; who shall take care, with all their might, to hold and observe, and cause to be observed, the peace and liberties we have granted them, and by this our present Charter confirmed in this manner; that is to say, that if we, our justiciary, our bailiffs, or any of our officers,

shall in any circumstance have failed in the performance of them towards any person, or shall have broken through any of these articles of peace and security, and the offence be notified to four barons chosen out of the five-and-twenty before mentioned, the said four barons shall repair to us, or our justiciary, if we are out of the realm, and, laying open the grievance, shall petition to have it redressed without delay: and if it be not redressed by us, or if we should chance to be out of the realm, if it should not be redressed by our justiciary within forty days, reckoning from the time it has been notified to us, or to our justiciary (if we should be out of the realm), the four barons aforesaid shall lay the cause before the rest of the five-and-twenty barons; and the said five-and-twenty barons, together with the community of the whole kingdom, shall distrain and distress us in all the ways in which they shall be able, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed, according to their pleasure; saving harmless our own person, and the persons of our Queen and children; and when it is redressed, they shall behave to us as before. And any person whatsoever in the kingdom may swear that he will obey the orders of the five-and-twenty barons aforesaid in the execution of the premises, and will distress us, jointly with them, to the utmost of his power; and we give public and free liberty to any one that shall please to swear to this, and never will hinder any person from taking the same oath.

62. As for all those of our subjects who will not, of their own accord, swear to join the five-and-twenty barons in distraining and distressing us, we will issue

orders to make them take the same oath as aforesaid. And if any one of the five-and-twenty barons dies, or goes out of the kingdom, or is hindered any other way from carrying the things aforesaid into execution, the rest of the said five-and-twenty barons may choose another in his room, at their discretion, who shall be sworn in like manner as the rest. In all things that are committed to the execution of these five-and-twenty barons, if, when they are all assembled together, they should happen to disagree about any matter, and some of them, when summoned, will not or cannot come, whatever is agreed upon, or enjoined, by the major part of those that are present shall be reputed as firm and valid as if all the five-and-twenty had given their consent; and the aforesaid five-and-twenty shall swear that all the premises they shall faithfully observe, and cause with all their power to be observed. And we will procure nothing from any one, by ourselves nor by another, whereby any of these concessions and liberties may be revoked or lessened; and if any such thing shall have been obtained, let it be null and void; neither will we ever make use of it either by ourselves or any other. And all the ill-will, indignations, and rancours that have arisen between us and our subjects, of the clergy and laity, from the first breaking out of the dissensions between us, we do fully remit and forgive: moreover, all trespasses occasioned by the said dissensions, from Easter in the sixteenth year of our reign till the restoration of peace and tranquillity, we hereby entirely remit to all, both clergy and laity, and as far as in us lies do fully forgive. We have, moreover, caused to be made for them the letters patent testimonial of Stephen, Lord

Archbishop of Canterbury, Henry, Lord Archbishop of Dublin, and the bishops aforesaid, as also of Master Pandulph, for the security and concessions aforesaid.

63. Wherefore we will and firmly enjoin, that the Church of England be free, and that all men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, truly and peaceably, freely and quietly, fully and wholly to themselves and their heirs, of us and our heirs, in all things and places, forever, as is aforesaid. It is also sworn, as well on our part as on the part of the barons, that all the things aforesaid shall be observed in good faith, and without evil subtilty. Given under our hand, in the presence of the witnesses above named, and many others, in the meadow called Runingmede, between Windsor and Staines, the 15th day of June, in the 17th year of our reign.

The translation here given is that published in Sheldon Amos's work on *The English Constitution*. The translation given by Sir E. Creasy was chiefly followed in this, but it was collated with another, accurate translation by Mr. Richard Thompson, accompanying his *Historical Essay on Magna Charta*, published in 1829, and also with the Latin text. "The explanation of the whole Charter," observes Mr. Amos, "must be sought chiefly in detailed accounts of the Feudal system in England, as explained in such works as those of Stubbs, Hallam, and Blackstone. The scattered notes here introduced have only for their purpose to elucidate the most unusual and perplexing expressions. The Charter printed in the Statute Book is that issued in the ninth year of Henry III., which is also the one specially confirmed by the Char-

ter of Edward I. The Charter of Henry III. differs in some (generally) insignificant points from that of John. The most important difference is the omission in the later Charter of the 14th and 15th Articles of John's Charter, by which the King is restricted from levying aids beyond the three ordinary ones, without the assent of the 'Common Council of the Kingdom,' and provision is made for summoning it. This passage is restored by Edward I. Magna Charta has been solemnly confirmed upwards of thirty times." See the chapter on the Great Charter, in Green's *History of the English People*. See also Stubbs's *Documents Illustrative of English History*. "The whole of the constitutional history of England," says Stubbs, "is a commentary on this Charter, the illustration of which must be looked for in the documents that precede and follow."

"CONFIRMATIO CHARTARUM" OF EDWARD I.

1297

I. Edward, by the grace of God, King of England, Lord of Ireland, and Duke Guyan, to all those that these present letters shall hear or see, greeting. Know ye that we, to the honour of God and of holy Church, and to the profit of our realm, have granted for us and our heirs, that the Charter of Liberties and the Charter of the Forest, which were made by common assent of all the realm in the time of King Henry our father, shall be kept in every point without breach. And we will that the same Charters shall be sent under our seal as well to our justices of the forest as to others, and to all sheriffs of shires, and to all our other officers, and to all our cities throughout the realm, together with our writs in the which it shall be contained that they cause the foresaid Charters to be

published, and to declare to the people that we have confirmed them in all points; and that our justices, sheriffs, mayors, and other ministers, which under us have the laws of our land to guide, shall allow the said Charters pleaded before them in judgment in all their points; that is to wit, the Great Charter as the common law, and the Charter of the Forest according to the assize of the Forest, for the wealth of our realm.

II. And we will that if any judgment be given from henceforth, contrary to the points of the Charters aforesaid, by the justices or by any other our ministers that hold plea before them against the points of the Charters, it shall be undone and holden for naught.

III. And we will that the same Charters shall be sent under our seal to cathedral churches throughout our realm, there to remain, and shall be read before the people two times by the year.

IV. And that all archbishops and bishops shall pronounce the sentence of great excommunication against all those that by word, deed, or counsel do contrary to the foresaid Charters, or that in any point break or undo them. And that the said curses be twice a year denounced and published by the prelates aforesaid. And if the prelates or any of them be remiss in the denunciation of the said sentences, the Archbishops of Canterbury and York for the time being, as is fitting, shall compel and distrain them to make that denunciation in form aforesaid.

V. And for so much as divers people of our realm are in fear that the aids and tasks which they have given to us beforetime towards our wars and other business, of their own grant and goodwill, howsoever

they were made, might turn to a bondage to them and their heirs, because they might be at another time found in the rolls, and so likewise the prises taken throughout the realm by our ministers; we have granted for us and our heirs, that we shall not draw such aids, tasks, nor prises into a custom, for anything that hath been done heretofore, or that may be found by roll or in any other manner.

VI. Moreover we have granted for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy Church, as also to earls, barons, and to all the commonalty of the land, that for no business from henceforth will we take such manner of aids, tasks, nor prises but by the common consent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed.

VII. And for so much as the more part of the commonalty of the realm find themselves sore grieved with the matelote of wools, that is to wit, a toll of forty shillings for every sack of wool, and have made petition to us to release the same; we, at their requests, have clearly released it, and have granted for us and our heirs that we shall not take such thing nor any other without their common assent and goodwill; saving to us and our heirs the custom of wools, skins, and leather, granted before by the commonalty aforesaid. In witness of which things we have caused these our letters to be made patents. Witness Edward our son, at London, the 10th day of October, the five-and-twentieth of our reign.

And be it remembered that this same Charter, in the same terms, word for word, was sealed in Flanders under the King's Great Seal, that is to say, at Ghent,

the 5th day of November, in the 52th year of the reign of our aforesaid Lord the King, and sent into England.

The words of this important document, from Professor Stubbs's translation, are given as the best explanation of the constitutional position and importance of the Charters of John and Henry III. See historical notice in Stubbs's *Documents Illustrative of English History*, p. 477. This is far the most important of the numerous ratifications of the Great Charter. Hallam calls it "that famous statute, inadequately denominated the Confirmation of the Charters, because it added another pillar to our constitution, not less important than the Great Charter itself." It solemnly confirmed the two Charters, the Charter of the Forest (issued by Henry II. in 1217 — see text in Stubbs, p. 338) being then considered as of equal importance with Magna Charta itself, establishing them in all points as the law of the land; but it did more. "Hitherto the king's prerogative of levying money by name of *tallage* or *prise*, from his towns and tenants in demesne, had passed unquestioned. Some impositions, that especially on the export of wool, affected all the king's subjects. It was now the moment to enfranchise the people and give that security to private property which Magna Charta had given to personal liberty." Edward's statute binds the king never to take any of these "aids, tasks, and prises" in future, save by the common assent of the realm. Hence, as Bowen remarks, the Confirmation of the Charters, or an abstract of it under the form of a supposed statute *de tallagio non concedendo* (see Stubbs, p. 487), was more frequently cited than any other enactment by the parliamentary leaders who resisted the encroachments of Charles I. The original of the *Confirmatio Chartarum*, which is in Norman French, is still in existence, though considerably shrivelled by the fire which damaged so many of the Cottonian manuscripts in 1731.

THE GRANT OF THE GREAT CHARTER

"An island in the Thames between Staines and Windsor had been chosen as the place of conference: the King encamped on one bank, while the barons covered the marshy flat, still known by the name of Runnymede, on the other. Their delegates met in the island between them, but the negotiations were a mere cloak to cover John's purpose of unconditional submission. The Great Charter was discussed, agreed to, and signed in a single day. One copy of it still remains in the British Museum, injured by age and fire, but with the royal seal still hanging from the brown, shrivelled parchment. It is impossible to gaze without reverence on the earliest monument of English freedom which we can see with our own eyes and touch with our own hands, the great Charter to which from age to age patriots have looked back as the basis of English liberty. But in itself the Charter was no novelty, nor did it claim to establish any new constitutional principles. The Charter of Henry the First formed the basis of the whole, and the additions to it are for the most part formal recognitions of the judicial and administrative changes introduced by Henry the Second. But the vague expressions of the older charters were now exchanged for precise and elaborate provisions. The bonds of unwritten custom which the older grants did little more than recognize had proved too weak to hold the Angevins; and the baronage now threw them aside for the restraints of written law. It is in this way that the Great Charter marks the transition from the age of traditional rights, preserved in the nation's memory and officially declared by the Primate, to the age of written legislation, of Parliaments and Statutes, which was soon to come. The Church had shown its power of self-defence in the struggle over the interdict, and the clause which recognized its rights alone retained the older and general form. But all vagueness ceases when the Charter passes

on to deal with the rights of Englishmen at large, their right to justice, to security of person and property, to good government. 'No freeman,' ran the memorable article that lies at the base of our whole judicial system, 'shall be seized or imprisoned, or dispossessed, or outlawed, or in any way brought to ruin; we will not go against any man nor send against him, save by legal judgment of his peers or by the law of the land.' 'To no man will we sell,' runs another, 'or deny, or delay, right or justice.' The great reforms of the past reigns were now formally recognized; judges of assize were to hold their circuits four times in the year, and the Court of Common Pleas was no longer to follow the King in his wanderings over the realm, but to sit in a fixed place. But the denial of justice under John was a small danger compared with the lawless exactions both of himself and his predecessor. Richard had increased the amount of the scutage which Henry II. had introduced, and applied it to raise funds for his ransom. He had restored the Danegeld, or land tax, so often abolished, under the new name of 'carucage,' had seized the wool of the Cistercians and the plate of the churches, and rated movables as well as land. John had again raised the rate of scutage, and imposed aids, fines, and ransoms at his pleasure without counsel of the baronage. The Great Charter met this abuse by the provision on which our constitutional system rests. With the exception of the three customary feudal aids which still remained to the crown, 'no scutage or aid shall be imposed in our realm save by the Common Council of the realm;' and to this Great Council it was provided that prelates and the greater barons should be summoned by special writ, and all tenants in chief through the sheriffs and bailiffs, at least forty days before. But it was less easy to provide means for the control of a King whom no man could trust, and a council of twenty-four barons was chosen from the general body of their order to enforce on John the observance of the Charter, with the right of declaring war on the King should its provisions be infringed.

Finally, the Charter was published throughout the whole country, and sworn to at every hundred-mote and town-mote by order from the King." — Green's *Short History of the English People*, p. 123.

APPENDIX D

A PART OF THE BILL OF RIGHTS

AN ACT FOR DECLARING THE RIGHTS AND LIBERTIES OF THE SUBJECT, AND SETTLING THE SUCCESSION OF THE CROWN. 1689.

Whereas the Lords Spiritual and Temporal, and Commons, assembled at Westminster, lawfully, fully, and freely representing all the estates of the people of this realm, did upon the thirteenth day of February, in the year of our Lord one thousand six hundred eighty-eight [o. s.],[1] present unto their Majesties, then called and known by the names and style of William and Mary, Prince and Princess of Orange, being present in their proper persons, a certain Declaration in writing, made by the said Lords and Commons, in the words following, viz.:

Whereas the late King James II., by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion, and the laws and liberties of this kingdom:

1. By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of Parliament.

[1] In New Style Feb. 23, 1689.

2. By committing and prosecuting divers worthy prelates for humbly petitioning to be excused from concurring to the said assumed power.

3. By issuing and causing to be executed a commission under the Great Seal for erecting a court, called the Court of Commissioners for Ecclesiastical Causes.

4. By levying money for and to the use of the Crown by pretence of prerogative, for other time and in other manner than the same was granted by Parliament.

5. By raising and keeping a standing army within this kingdom in time of peace, without consent of Parliament, and quartering soldiers contrary to law.

6. By causing several good subjects, being Protestants, to be disarmed, at the same time when Papists were both armed and employed contrary to law.

7. By violating the freedom of election of members to serve in Parliament.

8. By prosecutions in the Court of King's Bench for matters and causes cognizable only in Parliament, and by divers other arbitrary and illegal causes.

9. And whereas of late years, partial, corrupt, and unqualified persons have been returned, and served on juries in trials, and particularly divers jurors in trials for high treason, which were not freeholders.

10. And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.

11. And excessive fines have been imposed; and illegal and cruel punishments inflicted.

12. And several grants and promises made of fines and forfeitures before any conviction or judgment

against the persons upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm.

And whereas the said late King James II. having abdicated the government, and the throne being thereby vacant, his Highness the Prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the Lords Spiritual and Temporal, and divers principal persons of the Commons) cause letters to be written to the Lords Spiritual and Temporal, being Protestants, and other letters to the several counties, cities, universities, boroughs, and cinque ports, for the choosing of such persons to represent them as were of right to be sent to Parliament, to meet and sit at Westminster upon the two-and-twentieth day of January, in this year one thousand six hundred eighty and eight,[1] in order to such an establishment, as that their religion, laws, and liberties might not again be in danger of being subverted; upon which letters elections have been accordingly made.

And thereupon the said Lords Spiritual and Temporal, and Commons, pursuant to their respective letters and elections, being now assembled in a full and free representation of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties, declare:

[1] In New Style Feb. 1, 1689.

1. That the pretended power of suspending of laws, or the execution of laws by regal authority, without consent of Parliament, is illegal.

2. That the pretended power of dispensing with laws, or the execution of laws by regal authority, as it hath been assumed and exercised of late, is illegal.

3. That the commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other commissions and courts of like nature, are illegal and pernicious.

4. *That levying money for or to the use of the Crown by pretence and prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted, is illegal.*[1]

5. *That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal.*[2]

6. *That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law.*[3]

7. *That the subjects which are Protestants may have arms for their defence suitable to their conditions, and as allowed by law.*[4]

8. That election of members of Parliament ought to be free.

9. *That the freedom of speech, and debates or proceed-*

[1] Compare this clause 4 with clauses 12 and 14 of Magna Charta, and with Art. I. § vii. clause 1 of the Constitution of the United States.

[2] Compare clause 5 with Amendment I.

[3] Compare clause 6 with Amendment III.

[4] Compare clause 7 with Amendment II.

ings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.[1]

10. *That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.*[2]

11. *That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.*[3]

12. That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, Parliament ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings, or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example.

To which demand of their rights they are particularly encouraged by the declaration of his Highness the Prince of Orange, as being the only means for obtaining a full redress and remedy therein.

Having therefore an entire confidence that his said Highness the Prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties:

[1] Compare clause 9 with Constitution, Art. I. § vi. clause 1.

[2] Compare clause 10 with Amendment VIII.

[3] Compare clause 11 with Amendments VI. and VII.

II. The said Lords Spiritual and Temporal, and Commons, assembled at Westminster, do resolve, that William and Mary, Prince and Princess of Orange, be, and be declared, King and Queen of England, France, and Ireland, and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them the said Prince and Princess during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in, and executed by, the said Prince of Orange, in the names of the said Prince and Princess, during their joint lives; and after their deceases, the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said Princess; and for default of such issue to the Princess Anne of Denmark, and the heirs of her body; and for default of such issue to the heirs of the body of the said Prince of Orange. And the Lords Spiritual and Temporal, and Commons, do pray the said Prince and Princess to accept the same accordingly.

The act goes on to declare that, their Majesties having accepted the crown upon these terms, the "rights and liberties asserted and claimed in the said declaration are the true, ancient, and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come."

The act then declares that William and Mary "are

and of right ought to be King and Queen of England," etc.; and it goes on to regulate the succession after their deaths.

"The passing of the Bill of Rights in 1689 restored to the monarchy the character which it had lost under the Tudors and the Stuarts. The right of the people through its representatives to depose the King, to change the order of succession, and to set on the throne whom they would, was now established. All claim of divine right, or hereditary right independent of the law, was formally put an end to by the election of William and Mary. Since their day no English sovereign has been able to advance any claim to the crown save a claim which rested on a particular clause in a particular Act of Parliament. William, Mary, and Anne were sovereigns simply by virtue of the Bill of Rights. George the First and his successors have been sovereigns solely by virtue of the Act of Settlement. An English monarch is now as much the creature of an Act of Parliament as the pettiest tax-gatherer in his realm." — Green's *Short History*, p. 673.

APPENDIX E

THE FUNDAMENTAL ORDERS OF CONNECTICUT

1638(9).

The first written constitution that created a government.

FORASMUCH as it hath pleased the Allmighty God by the wise disposition of his diuyne p'uidence so to

Order and dispose of things that we the Inhabitants and Residents of Windsor, Harteford and Wethersfield are now cohabiting and dwelling in and vppon the River of Conectecotte and the Lands thereunto adioyneing; And well knowing where a people are gathered togather the word of God requires that to mayntayne the peace and vnion of such a people there should be an orderly and decent Gouerment established according to God, to order and dispose of the affayres of the people at all seasons as occation shall require; doe therefore assotiate and conioyne our selues to be as one Publike State or Comonwelth; and doe, for our selues and our Successors and such as shall be adioyned to vs att any tyme hereafter, enter into Combination and Confederation togather, to mayntayne and p^r^searue the liberty and purity of the gospell of our Lord Jesus w^ch^ we now p^r^fesse, as also the disciplyne of the Churches, w^ch^ according to the truth of the said gospell is now practised amongst vs; As also in o^r^ Ciuell Affaires to be guided and gouerned according to such Lawes, Rules, Orders and decrees as shall be made, ordered & decreed, as followeth: —

1. It is Ordered, sentenced and decreed, that there shall be yerely two generall Assemblies or Courts, the one the second thursday in Aprill, the other the second thursday in September, following; the first shall be called the Courte of Election, wherein shall be yerely Chosen frō tyme to tyme soe many Magestrats and other publike Officers as shall be found requisitte: Whereof one to be chosen Gouernour for the yeare ensueing and vntill another be chosen, and noe other Magestrate to be chosen for more than one yeare;

p^r^uided allwayes there be sixe chosen besids the Gouernour; w^ch^ being chosen and sworne according to an Oath recorded for that purpose shall haue power to administer iustice according to the Lawes here established, and for want thereof according to the rule of the word of God; w^ch^ choise shall be made by all that are admitted freemen and haue taken the Oath of Fidellity, and doe cohabitte w^th^in this Jurisdiction, (hauing beene admitted Inhabitants by the maior p^r^t of the Towne wherein they liue,) or the mayor p^r^te of such as shall be then p^r^sent.

2. It is Ordered, sentensed and decreed, that the Election of the aforesaid Magestrats shall be on this manner: euery p^r^son p^r^sent and quallified for choyse shall bring in (to the p^r^sons deputed to receaue thē) one single pap^r^ w^th^ the name of him written in yt whom he desires to haue Gouernour, and he that hath the greatest nūber of papers shall be Gouernor for that yeare. And the rest of the Magestrats or publike Officers to be chosen in this manner: The Secretary for the tyme being shall first read the names of all that are to be put to choise and then shall seuerally nominate them distinctly, and euery one that would haue the p^r^son nominated to be chosen shall bring in one single paper written vppon, and he that would not haue him chosen shall bring in a blanke: and euery one that hath more written papers then blanks shall be a Magistrat for that yeare; w^ch^ papers shall be receaued and told by one or more that shall be then chosen by the court and sworne to be faythfull therein; but in case there should not be sixe chosen as aforesaid, besids the Gouernor, out of those w^ch^ are nominated, then he or they w^ch^ haue the most written pap^r^s shall be a

Magestrate or Magestrats for the ensueing yeare, to make vp the foresaid nūber.

3. It is Ordered, sentenced and decreed, that the Secretary shall not nominate any p^r^son, nor shall any p^r^son be chosen newly into the Magestracy w^ch^ was not p^r^pownded in some Generall Courte before, to be nominated the next Election; and to that end yt shall be lawfull for ech of the Townes aforesaid by their deputyes to nominate any two whō they conceaue fitte to be put to election; and the Courte may ad so many more as they iudge requisitt.

4. It is Ordered, sentenced and decreed that noe p^r^son be chosen Gouernor aboue once in two yeares, and that the Gouernor be always a mēber of some approved congregation, and formerly of the Magestracy w^th^in this Jurisdiction; and all the Magestrats Freemen of this Comonwelth: and that no Magestrate or other publike officer shall execute any p^r^te of his or their Office before they are seuerally sworne, w^ch^ shall be done in the face of the Courte if they be p^r^sent, and in case of absence by some deputed for that purpose,

5. It is Ordered, sentenced and decreed, that to the aforesaid Courte of Election the seu^r^all Townes shall send their deputyes, and when the Elections are ended they may p^r^ceed in any publike searuice as at other Courts. Also the other Generall Courte in September shall be for makeing of lawes, and any other publike occation, w^ch^ conserns the good of the Comonwelth.

6. It is Ordered, sentenced and decreed, that the Gou^r^nor shall, ether by himselfe or by the secretary, send out sumons to the Constables of eu^r^ Towne for the cauleing of these two standing Courts, on

month at lest before their seu^rall tymes: And also if the Gou^rnor and the gretest p^rte of the Magestrats see cause vppon any spetiall occation to call a generall Courte, they may giue order to the secretary soe to doe w^thin fowerteene dayes warneing; and if vrgent necessity so require, vppon a shorter notice, giueing sufficient grownds for yt to the deputyes when they meete, or els be questioned for the same; And if the Gou^rnor and Mayor p^rte of Magestrats shall ether neglect or refuse to call the two Generall standing Courts or ether of thē, as also at other tymes when the occations of the Comonwelth require, the Freemen thereof, or the Mayor p^rte of them, shall petition to them soe to doe: if then yt be ether denyed or neglected the said Freemen or the Mayor p^rte of them shall haue power to giue order to the Constables of the seuerall Townes to doe the same, and so may meete togather, and chuse to themselues å Moderator, and may p^rceed to do any Acte of power, w^ch any other Generall Courte may.

7. It is Ordered, sentenced and decreed that after there are warrants giuen out for any of the said Generall Courts, the Constable or Constables of ech Towne shall forthw^th give notice distinctly to the inhabitants of the same, in some Publike Assembly or by goeing or sending frō howse to howse, that at a place and tyme by him or them lymited and sett, they meet and assemble thē selues togather to elect and chuse certen deputyes to be att the Generall Courte then following to agitate the afayres of the comonwelth; w^ch said Deputyes shall be chosen by all that are admitted Inhabitants in the seu^rall Townes and haue taken the oath of fidellity; p^ruided that non be

chosen a Deputy for any Generall Courte w^ch^ is not a Freeman of this Comonwelth.

The foresaid deputyes shall be chosen in manner following: euery p^r^son that is p^r^sent and quallified as before exp^r^ssed, shall bring the names of such, written in seu^r^rall papers, as they desire to haue chosen for that Imployment, and these 3 or 4, more or lesse, being the nūber agreed on to be chosen for that tyme, that haue greatest nūber of papers written for thē shall be deputyes for that Courte; whose names shall be endorsed on the backe side of the warrant and returned into the Courte, w^th^ the Constable or Constables hand vnto the same.

8. It is Ordered, sentenced and decreed, that Wyndsor, Hartford and Wethersfield shall haue power, ech Towne, to send fower of their freemen as deputyes to euery Generall Courte; and whatsoeuer other Townes shall be hereafter added to this Jurisdiction, they shall send so many deputyes as the Courte shall judge meete, a resonable p^r^portion to the nūber of Freemen that are in the said Townes being to be attended therein; w^ch^ deputyes shall have the power of the whole Towne to giue their voats and alowance to all such lawes and orders as may be for the publike good, and unto w^ch^ the said Townes are to be bownd.

9. It is ordered and decreed, that the deputyes thus chosen shall haue power and liberty to appoynt a tyme and a place of meeting togather before any Generall Courte to aduise and consult of all such things as may concerne the good of the publike, as also to examine their owne Elections, whether according to the order, and if they or the gretest p^r^te of them find any

election to be illegall they may seclud such for p^rsent frō their meeting, and returne the same and their resons to the Courte; and if yt proue true, the Courte may fyne the p^rty or p^rtyes so intruding and the Towne, if they see cause, and giue out a warrant to goe to a newe election in a legall way, either in p^rte or in whole. Also the said deputyes shall haue power to fyne any that shall be disorderly at their meetings, or for not coming in due tyme or place according to appoyntment; and they may returne the said fynes into the Courte if yt be refused to be paid, and the tresurer to take notice of yt, and to estreete or levy the same as he doth other fynes.

10. It is Ordered, sentenced and decreed, that euery Generall Courte, except such as through neglecte of the Gou^rnor and the greatest p^rte of Magestrats the Freemen themselves doe call, shall consist of the Gouernor, or some one chosen to moderate the Court, and 4 other Magestrats at lest, w^th the mayor p^rte of the deputyes of the seuerall Townes legally chosen; and in case the Freemen or mayor p^rte of thē, through neglect or refusall of the Gouernor and mayor p^rte of the magestrats, shall call a Courte, y^t shall consist of the mayor p^rte of Freemen that are p^rsent or their deputyes, w^th a Moderator chosen by thē: In w^ch said Generall Courts shall consist the supreme power of the Comonwelth, and they only shall haue power to make laws or repeale thē, to graunt leuyes, to admitt of Freemen, dispose of lands vndisposed of, to seuerall Townes or p^rsons, and also shall haue power to call ether Courte or Magestrate or any other p^rson whatsoeuer into question for any misdemeanour, and may for just causes displace

or deale otherwise according to the nature of the offence; and also may deale in any other matter that concerns the good of this comonwelth, excepte election of Magestrats, w^ch^ shall be done by the whole boddy of Freemen.

In w^ch^ Courte the Gouernour or Moderator shall haue power to order the Courte to giue liberty of spech, and silence vnceasonable and disorderly speakeings, to put all things to voate, and in case the vote be equall to haue the casting voice. But non of these Courts shall be adiorned or dissolued w^th^out the consent of the maior p^r^te of the Court.

11. It is ordered, sentenced and decreed, that when any Generall Courte vppon the occations of the Comonwelth haue agreed vppon any sume or somes of mony to be leuyed vppon the seuerall Townes w^th^in this Jurisdiction, that a Comittee be chosen to sett out and appoynt w^t^ shall be the p^r^portion of euery Towne to pay of the said leuy, p^r^vided the Comittees be made vp of an equall nūber out of each Towne.

14^th^ January, 1638, the 11 Orders abouesaid are voted.

THE OATH OF THE GOU^R^NOR, FOR THE [P^R^SENT].

I M. W. being now chosen to be Gou^r^nor w^th^in this Jurisdiction, for the yeare ensueing, and vntil a new be chosen, doe sweare by the greate and dreadfull name of the everliueing God, to p^r^mote the publicke good and peace of the same, according to the best of my skill; as also will mayntayne all lawfull priuiledges of this Comonwealth; as also that all wholesome lawes that are or shall be made by lawfull authority here established, be duly executed; and will

MAP TO ILLUSTRATE THE ACQUISITION OF TERRITORY BY THE UNITED STATES.
SQ. MILES
Area of United States in 1783 . . . 827,844
Austria-Hungary, German Empire, France, and Spain . . . 844,804
Louisiana Purchase, 1803, with the portion of Oregon territory retained in 1846 . . . 1,171,931
Austria-Hungary, German Empire, Sweden, Norway, Denmark, Belgium, France, and Spain . . . 1,168,787
Florida Purchase, 1819 . . . 59,268
England and Wales . . . 58,309
Texan Annexation 1845 . . . 375,239
Austria-Hungary, Italy, and Switzerland . . . 367,583
Mexican Cessions, 1848–53 . . . 591,318
German Empire, France, and Spain . . . 603,862
Alaska, 1867 . . . 577,390
Austria-Hungary, German Empire, and Norway . . . 574,057
Cuba, Porto Rico, Hawaii, Philippine Islands, etc. 1898–99 . . . 171,757
Italy, with England and Wales . . . 168,974
United States in 1900 . . . 3,774,747
Europe . . . 3,986,975
ARCTIC OCEAN
ALASKA PURCHASE
1867
ASIA
BERING SEA
SEA OF OKHOTSK
PACIFIC OCEAN
HAWAII ANNEXED 1898
PHILIPPINE ISLANDS CEDED BY SPAIN 1898
GUAM CEDED BY SPAIN 1898
TUTUILA BY TRIPARTITE TREATY WITH GREAT BRITAIN AND GERMANY 1899
54° 40'
OREGON TERRITORY
DIVIDED BY GREAT BRITAIN & U.S. 1846
CANADA
LOUISIANA PURCHASE 1803
NORTHWESTERN TERRITORY
UNITED STATES IN 1783
VIRGINIA CESSION
N. CAROLINA
GEORGIA CESSION
MEXICAN CESSION 1848
MEXICAN CESSION
TEXAN ANNEXATION 1845
FLORIDA PURCHASE 1819
CUBA MILITARY OCCUPATION 1898
PORTO RICO CEDED BY SPAIN 1898
ATLANTIC OCEAN
MEXICO
SOUTH AMERICA

further the execution of Justice according to the rule of Gods word; so helpe me God, in the name of the Lo: Jesus Christ.

THE OATH OF A MAGESTRATE, FOR THE PRSENT.

I, N. W. being chosen a Magestrate wthin this Jurisdiction for the yeare ensueing, doe sweare by the great and dreadfull name of the euerliueing God, to prmote the publike good and peace of the same, according to the best of my skill, and that I will mayntayne all the lawfull priuiledges thereof according to my vnderstanding, as also assist in the execution of all such wholsome lawes as are made or shall be made by lawfull authority heare established, and will further the execution of Justice for the tyme aforesaid according to the righteous rule of Gods word; so helpe me God, etc.

[Until 1752, the legal year in England began March 25 (Lady Day), not January 1. All the days between January 1 and March 25 of the year which we now call 1639 were therefore then a part of the year 1638; so that the date of the Constitution is given by its own terms as 1638, instead of 1639.]

APPENDIX F

THE STATES CLASSIFIED ACCORDING TO ORIGIN

1. The thirteen original states.
2. States formed directly from other states.
   Vermont from territory disputed between New York and New Hampshire, Kentucky from

Virginia, Maine from Massachusetts, West Virginia from Virginia.

3. States from the Northwest Territory (see p. 275).

Ohio, Michigan,
Indiana, Wisconsin,
Illinois, Minnesota, in part.

4. States from other territory ceded by states.

Tennessee, ceded by North Carolina,
Alabama, ceded by South Carolina and Georgia,
Mississippi, ceded by South Carolina and Georgia.

5. States from the Louisiana purchase (see p. 275).

Louisiana, North Dakota,
Arkansas, South Dakota,
Missouri, Montana,
Kansas, Minnesota, in part,
Nebraska, Wyoming, in part,
Iowa, Colorado, in part.

6. States from Mexican cessions.

California, Utah, Wyoming, in part,
Nevada, Colorado, in part.

7. States from territory defined by treaty with Great Britain (see p. 275).

Oregon, Washington, Idaho.

8. States from other sources.

Florida, from a Spanish cession,
Texas, by annexation (see p. 276).

APPENDIX G

TABLE OF STATES AND TERRITORIES

Ratio based on census of 1900 to go into effect in 1902 — 194,182.

	Dates.	Number.	Names.	Population to sq. m.	Area in sq. m.	Population, 1900.	Cong. Rep. 1902.	Electoral Vote, 1904.
Ratified the Constitution	1787, Dec. 7	1	Delaware	90.1	2,050	184,735	1	3
	Dec. 12	2	Pennsylvania	139.3	45,215	6,302,115	32	34
	Dec. 18	3	New Jersey	241.	7,815	1,883,669	10	12
	1788, Jan. 2	4	Georgia	37.2	59,475	2,216,331	11	13
	Jan. 9	5	Connecticut	184.	4,990	908,355	5	7
	Feb. 6	6	Massachusetts	337.3	8,315	2,805,346	14	16
	April 28	7	Maryland	97.4	12,210	1,190,050	6	8
	May 23	8	South Carolina	43.8	30,570	1,340,316	7	9
	June 21	9	New Hampshire	44.2	9,305	411,588	2	4
	June 25	10	Virginia	43.6	42,450	1,854,184	10	12
	July 26	11	New York	147.8	49,170	7,268,012	37	39
	1789, Nov. 21	12	North Carolina	36.2	52,250	1,893,810	10	12
	1790, May 29	13	Rhode Island	342.8	1,250	428,556	2	4
Admitted to the Union.	1791, Mar. 4	14	Vermont	35.9	9,565	343,641	2	4
	1792, June 1	15	Kentucky	53.1	40,400	2,147,174	11	13
	1796, June 1	16	Tennessee	48.	42,050	2,020,616	10	12
	1803, Feb. 19	17	Ohio	101.2	41,060	4,157,545	21	23
	1812, April 30	18	Louisiana	28.3	48,720	1,381,625	7	9
	1816, Dec. 11	19	Indiana	69.2	36,350	2,516,462	13	15
	1817, Dec. 10	20	Mississippi	33.1	46,810	1,551,270	8	10
	1818, Dec. 3	21	Illinois	85.1	56,650	4,821,550	25	27
	1819, Dec. 14	22	Alabama	34.9	52,250	1,828,697	9	11
	1820, Mar. 15	23	Maine	21.	33,040	694,466	4	6
	1821, Aug. 10	24	Missouri	44.7	69,415	3,106,665	16	18
	1836, June 15	25	Arkansas	24.3	53,850	1,311,564	7	9
	1837, Jan. 26	26	Michigan	41.1	58,915	2,420,982	12	14
	1845, Mar. 3	27	Florida	9.	58,680	528,542	3	5
	1845, Dec. 29	28	Texas	11.4	265,780	3,048,710	16	18
	1846, Dec. 28	29	Iowa	39.8	56,025	2,231,853	11	13
	1848, May 29	30	Wisconsin	36.9	56,040	2,069,042	11	13
	1850, Sept. 9	31	California	9.3	158,360	1,485,053	8	10
	1858, May 11	32	Minnesota	21.	83,365	1,751,394	9	11
	1859, Feb. 14	33	Oregon	4.3	96,030	413,536	2	4
	1861, Jan. 29	34	Kansas	17.9	82,080	1,470,495	8	10
	1863, June 19	35	West Virginia	38.7	24,780	958,800	5	7
	1864, Oct. 31	36	Nevada	.4	110,700	42,335	1	3
	1867, Mar. 1	37	Nebraska	13.8	77,510	1,068,539	6	8
	1876, Aug. 1	38	Colorado	5.2	103,925	539,700	3	5
	1889, Nov. 2	39	North Dakota	4.5	70,795	319,146	2	4
		40	South Dakota	5.2	77,650	401,570	2	4
	1889, Nov. 8	41	Montana	1.7	146,080	243,329	1	3
	1889, Nov. 11	42	Washington	7.5	69,180	518,103	3	5
	1890, July 3	43	Idaho	1.9	84,800	161,772	1	3
	1890, July 10	44	Wyoming	.9	97,890	92,531	1	3
	1896, Jan. 4	45	Utah	3.3	84,970	276,749	1	3
Organized.	1791, Mar. 3		Dist. of Columbia	3,981.7	70	278,718		
	1834, June 30		Indian Territory	12.5	31,400	391,960		
	1850, Sept. 9		New Mexico	1.6	122,580	195,310		
	1863, Feb. 24		Arizona	1.1	113,020	122,931		
	1868, July 27		Alaska	.1	590,884	63,592		
	1889, April 22		Oklahoma	9.9	39,030	398,331		
	1900, May 1		Porto Rico	264.3	3,606	*953,243		
	1900, June 14		Hawaii	23.8	6,449	154,001		

1902, total House of Representatives 386 + Senate 90 = electoral votes, 476.

* By the War Department census of Nov. 10, 1899.

APPENDIX I

APPENDIX H

POPULATION OF THE UNITED STATES 1790–1900

Showing Percentages of Urban Population.

Date.	Pop. of U. S.	No. of Cities.	Pop. of Cities.	Percentage of Urban Population.
1790	3,929,214	6	131,472	3.33
1800	5,308,483	6	210,873	3.9
1810	7.239,881	11	356,920	4.9
1820	9,633,822	13	474,135	4.9
1830	12,866,020	26	864,509	6.7
1840	17,069,453	44	1,453,994	8.5
1850	23,191,876	85	2,897,586	12.5
1860	31,443,321	141	5,072,256	16.1
1870	38,558,371	226	8,071,875	20.9
1880	50,155,783	286	11,318,597	22.5
1890	62,622,250	443	18,235,670	29.1
1900	76,303,387	*517	24,703,709	32.4

* Incorporated places of over 8,000 inhabitants.

APPENDIX I

AN EXAMINATION PAPER FOR CUSTOMS CLERKS

Applicant's No .

APPLICANT'S DECLARATION.

DIRECTIONS. — 1. The number above is *your examination number*. Write it at the top of every sheet given you in this examination.

2. Fill promptly all the blanks in this sheet. Any omission may lead to the rejection of your papers.

3. Write all answers and exercises in ink.

4. Write your name on no other sheet but this.

Place this sheet in the envelope. Write your number on the envelope and seal the same.

Declaration.

I declare upon my honour as follows:

1. My true and full name is (if female, please say whether Mrs. or Miss)

2. Since my application was made I have been living at (give all the places)

3. My post-office address in full is

4. If examined within twelve months for the civil service — for any post-office, custom-house, or Department at Washington — state the time, place, and result.

5. If you have ever been in the civil service, state where and in what position, and when you left it and the reasons therefor.

6. Are you now under enlistment in the army or navy?

7. If you have been in the military or naval service of the United States, state which, and whether you were honourably discharged, when, and for what cause.

8. Since my application no change has occurred in my health or physical capacity except the following:

9. I was born at ———, on the ——— day of ———, 18 .

10. My present business or employment is

11. I swore to my application for this examination

as near as I can remember at (town or city of),——— on the ——— day of ———, 19 .

All the above statements are true, to the best of my knowledge and belief.

(*Signature in usual form.*) ——— ———

Dated at the city of ———, State of ———, this ——— day of ———,19 .

The questions are different at each examination, but the following are in subject and grade fair specimens. No other specimen questions can be furnished to applicants. The different subjects are weighted according to their relative importance in the examination. In determining the general average of a competitor, the average on each subject is multiplied by the number indicating the relative weight of the subject, and the sum of these products divided by the sum of the relative weights gives the general average.

(b) CUSTOM-HOUSE SERVICE.

There are three grades of general examinations for this service, namely:

FIRST GRADE. (Time allowed, 5 1-2 hrs.)	Relative weights.	SECOND GRADE. (Time allowed, 4 hours.)	Relative weights.	THIRD GRADE. (Time allowed, 3 hours.)	Relative weights.
SUBJECTS.		SUBJECTS.		SUBJECTS.	
1st — Spelling.....	10	1st — Spelling.....	20	1st —Spelling.....	20
2d — Arithmetic....	25	2d — Arithmetic.....	20	2d — Arithmetic....	20
3d — Letter writing.	15	3d — Letter writing..	20	3d — Letter writing.	20
4th — Penmanship..	15	4th — Penmanship...	20	4th — Penmanship..	20
5th — Copying from plain copy.....	10	5th — Copying from plain copy.....	20	5th — Copying from plain copy.....	20
6th — Copying from rough draft.....	10	Total.....	100	Total.....	100
7th — Geography....	15				
Total.....	100				

EXAMINATION PAPER

The *first-grade* examination will be given to applicants for such deputy officer positions as may be subject to examination, and for clerk (male and female), and day inspector.

The *second-grade* examination will be given to applicants for the positions of assistant weigher, messenger, and sampler.

The *third-grade* examination will be given to applicants for the positions of watchman, night inspector, opener and packer, inspectress, foreman, janitor, attendant, porter, and classified labourer. Applicants for the grade of boatman will be rated only upon age, experience, and intelligence, character as a workman, and physical condition, except in positions in which educational qualifications are desired. In such cases the third-grade examination will be given in addition to the elements named.

FIRST GRADE CUSTOM-HOUSE SERVICE EXAMINATION.

First Subject. — *Spelling.* Spelling is dictated by the examiner. The words are written by the competitor in the blank spaces indicated on the first sheet of the examination.

The examiner pronounces each word and gives its definition. The competitor is required to write only the word *and* not *its definition.*

Second Subject. — *Arithmetic.* This subject will embrace problems in fundamental rules, fractions, percentage (interest and discount), and analysis.

[N. B. — In solving problems the processes should be not merely indicated, but all the figures necessary in solving each problem should be given in full. The answer to each problem should be indicated by writing "Ans." after it.]

Question 1. This question comprises a test in adding numbers across and finding the grand total. There are usually three columns of about twelve numbers each to be added. The arrangement of the columns is shown below, but only two numbers are placed in each column, being intended merely to explain the test: —

3517	7169	4931	.....
6326	5145	676	.....
Grand total			
			.....

Question 2. Multiply 321.6555 by $819\frac{3}{8}$: from the product subtract 16042.0918, and divide the remainder by 5.

Question 3. What is the value of 72 yards of goods weighing $2\frac{1}{4}$ pounds to the yard, composed of 5 parts of silk worth $4 per pound, 3 parts of cotton worth $0.48 per pound, and one part of worsted worth $1.75 per pound?

Question 4. The total amount of duty on two invoices was $409.50. The rate of duty on the first invoice was 25 per cent. and on the second 18 per cent. Had the rate of duty on the second been also 25 per cent. the total duty on the two invoices would have been $490. What was the value of each invoice?

Question 5. At the rate of 15 cents per square yard and 30 per cent. ad valorem, what is the amount of duty on 38 pieces of drugget, each 24 yards long and 45 inches wide, costing $\frac{2}{5}$ of a pound sterling per linear yard? (£ = $4.8665.)

THIRD SUBJECT. — *Letter writing.* The competi-

tor is required to write a letter on one of two subjects given.

This exercise is designed to test the competitor's knowledge of simple English composition and his general intelligence. In marking the letter, its errors in form and address, in spelling, capitals, punctuation, syntax, and style, and its treatment of the subject are considered.

The competitor must avoid allusion to his political or religious opinions or affiliations. The letter must contain not less than 150 words, must be addressed to the "United States Civil Service Commission, Washington, D. C.," and must be dated at the place where the examination is held. The examination number, *and not the name of the competitor*, must be used for a signature to the letter.

FOURTH SUBJECT. — *Penmanship.* The mark on penmanship will be determined by legibility, rapidity, neatness, and general appearance, and by correctness and uniformity in the formation of words, letters, and punctuation marks in the exercise of the fifth subject — copying from plain copy.

FIFTH SUBJECT. — *Copying from plain copy.* N. B. — Paragraph, spell, capitalize, and punctuate precisely as in the copy. All omissions and mistakes are taken into consideration in marking this exercise.

Make an exact copy of the following: —

SEC. 3. That whenever, in the judgment of the head of any Department, the duties assigned to a clerk of one class can be as well performed by a clerk of a lower class or by a female clerk, it shall be lawful for him to diminish the number of clerks of the higher grade and increase the number of the clerks of the

lower grade within the limit of the total appropriation for such clerical service: Provided, That in making any reduction of force in any of the Executive Departments the head of such Department shall retain those persons who may be equally qualified who have been honourably discharged from the military or naval service of the United States, and the widows and orphans of deceased soldiers and sailors. (19 Stats., 255.)

SIXTH SUBJECT. — *Copying from rough draft.* The competitor is required to make a fair copy, on a blank sheet, of a rough-draft manuscript, punctuating and capitalizing properly, writing in full all abbreviated words, and correcting errors in syntax and orthography.

SEVENTH SUBJECT. — *Geography.* This subject is given in the first-grade examination only.

The following are samples of questions which were used in this examination: —

1. Name States as follows: Two that border on the Columbia River; two that border on both the Missouri and Mississippi rivers; two that border on both Virginia and the Ohio River; two that border on New Jersey; two that border on the Savannah River. 2. In what State is each of the following-named: Penobscot Bay, Corpus Christi Bay, Puget Sound, Pearl River, Oneida Lake. 3. Name the largest city in each of the following-named States, and name the river or body of water on which each city required is situated: Connecticut, Mississippi, Nebraska, Minnesota, Ohio. 4. In what State is each of the following-named prominent cities located: Racine, Bangor, Allegheny, Charlotte, Cairo, Los Angeles, Shreveport, Fargo, Evansville, Ogdensburg.

5. In what foreign country, colony, or possession is each of the following-named prominent cities: Bremen, Buenos Ayres, Yokohama, Cape Town, Havre, Melbourne, Adrianople, Ottawa, Teheran, Panama.

SECOND AND THIRD GRADE CUSTOM-HOUSE SERVICE EXAMINATIONS.

The second-grade examination is similar to that for the first grade, with these exceptions: Arithmetic embraces problems in the four fundamental rules, common and decimal fractions. The letter must contain not less than 125 words. Copying from rough draft and geography are omitted.

The third-grade examination is similar to that for the second grade, with these exceptions: In the spelling exercise the words are less difficult. Arithmetic embraces simple tests in addition, subtraction, multiplication, division, and United States money. The letter must contain not less than 100 words.

APPENDIX J

THE NEW YORK CORRUPT PRACTICES ACT OF 1890

CHAP. 94. — AN ACT TO AMEND TITLE FIVE OF THE PENAL CODE RELATING TO CRIMES AGAINST THE ELECTIVE FRANCHISE.

Approved by the Governor April 4, 1890. Passed, three fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows: —

APPENDIX J

SECTION 1. Title five of the Penal Code, entitled "Of crimes against the elective franchise," is hereby amended so as to read as follows: —

§ 41. It shall be unlawful for any person, directly or indirectly, by himself or through any other person —

1. To pay, lend, or contribute, or offer or promise to pay, lend, or contribute any money or other valuable consideration, to or for any voter, or to or for any other person, to induce such voter to vote or refrain from voting at any election, or to induce any voter to vote or refrain from voting at such election for any particular person or persons, or to induce such voter to come to the polls or remain away from the polls at such election, or on account of such voter having voted or refrained from voting, or having voted or refrained from voting for any particular person, or having come to the polls or remained away from the polls at such election.

2. To give, offer, or promise any office, place, or employment, or to promise to procure or endeavour to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting at any election, or to induce any voter to vote or refrain from voting at such election for any particular person or persons.

3. To make any gift, loan, promise, offer, procurement, or agreement, as aforesaid, to, for, or with any person in order to induce such person to procure or endeavour to procure the election of any person, or the vote of any voter at any election.

4. To procure or engage, promise or endeavour to

procure, in consequence of any such gift, loan, offer, promise, procurement, or agreement, the election of any person or the vote of any voter at such election.

5. To advance or pay or cause to be paid any money or other valuable thing to or for the use of any other person with the intent that the same, or any part thereof, shall be used in bribery at any election, or to knowingly pay, or cause to be paid, any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part, expended in bribery at any election.

§ 41*a*. It shall be unlawful for any person, directly or indirectly, by himself or through any other person —

1. To receive, agree, or contract for, before or during an election, any money, gift, loan, or other valuable consideration, office, place, or employment for himself or any other person, for voting or agreeing to vote, or for coming or agreeing to come to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote or refraining or agreeing to refrain from voting for any particular person or persons at any election.

2. To receive any money or other valuable thing during or after an election on account of himself or any other person having voted or refrained from voting at such election, or on account of himself or any other person having voted or refrained from voting for any particular person at such election, or on account of himself or any other person having come to the polls or remained away from the polls at such election, or on account of having induced any other

person to vote or refrain from voting or to vote or refrain from voting for any particular person or persons at such election.

§ 41*b*. It shall be unlawful for any candidate for public office, before or during an election, to make any bet or wager with a voter, or take a share or interest in or in any manner become a party to any such bet or wager, or provide or agree to provide any money to be used by another in making such bet or wager, upon any event or contingency whatever. Nor shall it be lawful for any person, directly or indirectly, to make a bet or wager with a voter, depending upon the result of any election, with the intent thereby to procure the challenge of such voter, or to prevent him from voting at such election.

§ 41*c*. It shall be unlawful for any person, directly or indirectly, by himself or any other person in his behalf, to make use of, or threaten to make use of, any force, violence, or restraint, or to inflict or threaten the infliction by himself, or through any other person, of any injury, damage, harm, or loss, or in any manner to practice intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting at any election, or to vote or refrain from voting for any particular person or persons at any election, or on account of such person having voted or refrained from voting at any election. And it shall be unlawful for any person by abduction, duress, or any forcible or fraudulent device or contrivance whatever to impede, prevent, or otherwise interfere with, the free exercise of the elective franchise by any voter; or to compel, induce, or prevail upon any voter either to give or refrain from giv-

ing his vote at any election, or to give or refrain from giving his vote for any particular person at any election. It shall not be lawful for any employer in paying his employees the salary or wages due them to inclose their pay in "pay envelopes" upon which there is written or printed any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees. Nor shall it be lawful for any employer within ninety days of general election to put up or otherwise exhibit in his factory, workshop, or other establishment or place where his employees may be working, any hand-bill or placard containing any threat, notice, or information that in case any particular ticket or candidate shall be elected, work in his place or establishment will cease, in whole or in part, or his establishment be closed up, or the wages of his workmen be reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees. This section shall apply to corporations, as well as to individuals, and any person or corporation violating the provisions of this section shall be deemed guilty of a misdemeanour, and any corporation violating this section shall forfeit its charter.

§ 41*d*. Every candidate who is voted for at any public election held within this state shall, within ten days after such election, file as hereinafter provided an itemized statement, showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Such statement shall give the names of the

various persons who received such moneys, the specific nature of each item, and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself or through any other person in aid of his election. Candidates for offices to be filled by the electors of the entire state, or any division or district thereof greater than a county, shall file their statements in the office of the secretary of state. The candidates for town, village, and city offices, excepting the city of New York, shall file their statements in the office of the town, village, or city clerk respectively, and in cities wherein there is no city clerk, with the clerk of the common council wherein the election occurs. Candidates for all other offices, including all offices in the city and county of New York, shall file their statements in the office of the clerk of the county wherein the election occurs.

§ 41*e*. A person offending against any provision of sections forty-one and forty-one-a of this act is a competent witness against another person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding, or investigation in the same manner as any other person. But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying shall not thereafter be liable to indictment, prosecution, or punishment for the offence with reference to which his testimony

was given and may plead or prove the giving of testimony accordingly, in bar of such an indictment or prosecution.

§ 41*f*. Whosoever shall violate any provision of this title, upon conviction thereof, shall be punished by imprisonment in a county jail for not less than three months nor more than one year. The offences described in section[1] forty-one and forty-one-a of this act are hereby declared to be infamous crimes. When a person is convicted of any offence mentioned in section forty-one of this act he shall in addition to the punishment above prescribed, forfeit any office to which he may have been elected at the election with reference to which such offence was committed; and when a person is convicted of any offence mentioned in section forty-one-a of this act he shall in addition to the punishment above prescribed be excluded from the right of suffrage for a period of five years after such conviction, and it shall be the duty of the county clerk of the county in which any such conviction shall be had, to transmit a certified copy of the record of conviction to the clerk of each county of the state, within ten days thereafter, which said certified copy shall be duly filed by the said county clerks in their respective offices. Any candidate for office who refuses or neglects to file a statement as prescribed in section forty-one-d of this act shall be deemed guilty of a misdemeanour, punishable as above provided and shall also forfeit his office.

§ 41*g*. Other crimes against the elective franchise are defined, and the punishment thereof prescribed by special statutes.

[1] So in the original.

§ 2. Section forty-one of the Penal Code, as it existed prior to the passage of this act, is hereby repealed.

§ 3. This act shall take effect immediately.

APPENDIX K

FORM OF AUSTRALIAN BALLOT ADOPTED IN MASSACHUSETTS, 1889

OFFICIAL BALLOT

FOR

PRECINCT , WARD

OF (CITY OR TOWN),

NOVEMBER , 18

[Fac-Simile of Signature of Secretary.]

Secretary of the Commonwealth.

SAMPLE BALLOT,[1]

With explanations and illustration.

Prepared by the Ballot Act League with the approval of the Secretary of the Commonwealth.

Some representative districts elect *one*, some *two*, and a few *three* representatives to the General Court.

[1] See pp. 410, 411.

Worcester County elects *four commissioners of insolvency* instead of three as in other counties.

No county commissioners or special commissioners will be voted for in the cities of Boston and Chelsea or the county of Nantucket.

Forms for nominating candidates can be had at the department of the Secretary of the Commonwealth.

Carefully observe the official specimen ballots to be posted and published just before election day.

APPENDIX K

To vote for a Person, mark a Cross X

GOVERNOR	Vote for ONE.
OLIVER AMES, of Easton	Republican.
WILLIAM H. EARLE, of Worcester	Prohibition.
WILLIAM E. RUSSELL, of Cambridge	Democratic.

LIEUTENANT-GOVERNOR	Vote for ONE.
JOHN BASCOM, of Williamstown	Prohibition.
JOHN Q. A. BRACKETT, of Arlington	Republican.
JOHN W. CORCORAN, of Clinton	Democratic.

SECRETARY	Vote for ONE.
WILLIAM N. OSGOOD, of Boston	Democratic.
HENRY B. PEIRCE, of Abington	Republican.
HENRY C. SMITH, of Williamsburg	Prohibition.

TREASURER	Vote for ONE.
JOHN M. FISHER, of Attleborough	Prohibition.
GEORGE A. MARDEN, of Lowell	Republican.
HENRY C. THACHER, of Yarmouth	Democratic.

AUDITOR	Vote for ONE.
CHARLES R. LADD, of Springfield	Republican.
EDMUND A. STOWE, of Hudson	Prohibition.
WILLIAM A. WILLIAMS, of Worcester	Democratic.

ATTORNEY-GENERAL	Vote for ONE.
ALLEN COFFIN, of Nantucket	Prohibition.
SAMUEL O. LAMB, of Greenfield	Democratic.
ANDREW J. WATERMAN, of Pittsfield	Republican.

COUNCILLOR, Third District	Vote for ONE.
ROBERT O. FULLER, of Cambridge	Republican.
WILLIAM E. PLUMMER, of Newton	Democratic.
SYLVANUS C. SMALL, of Winchester	Prohibition.

SENATOR, Third Middlesex District	Vote for ONE.
FREEMAN HUNT, of Cambridge	Democratic.
CHESTER W. KINGSLEY, of Cambridge	Republican. Prohibition.

DISTRICT ATTORNEY, Northern District	Vote for ONE.
CHARLES S. LINCOLN, of Somerville	Democratic.
JOHN M. READ, of Lowell	Prohibition.
WILLIAM B. STEVENS, of Stoneham	Republican.

in the Square at the right of the name.

REPRESENTATIVES IN GENERAL COURT First Middlesex District	Vote for TWO.
WILLIAM H. MARBLE, of Cambridge	Prohibition.
ISAAC McLEAN, of Cambridge	Democratic.
GEORGE A. PERKINS, of Cambridge	Democratic.
JOHN READ, of Cambridge	Republican.
CHESTER F. SANGER, of Cambridge	Republican.
WILLIAM A. START, of Cambridge	Prohibition.

SHERIFF	Vote for ONE.
HENRY G. CUSHING, of Lowell	Republican.
HENRY G. HARKINS, of Lowell	Prohibition.
WILLIAM H. SHERMAN, of Ayer	Democratic.

COMMISSIONERS OF INSOLVENCY	Vote for THREE.
JOHN W. ALLARD, of Framingham	Democratic.
GEORGE J. BURNS, of Ayer	Republican.
WILLIAM A. CUTTER, of Cambridge	Prohibition.
FREDERIC T. GREENHALGE, of Lowell	Republican.
JAMES HICKS, of Cambridge	Prohibition.
JOHN C. KENNEDY, of Newton	Republican.
RICHARD J. McKELLEGET, of Cambridge	Democratic.
EDWARD D. McVEY, of Lowell	Democratic.
ELMER A. STEVENS, of Somerville	Prohibition.

COUNTY COMMISSIONER	Vote for ONE.
WILLIAM S. FROST, of Marlborough	Republican.
JOSEPH W. BARBER, of Sherborn	Prohibition.
JAMES SKINNER, of Woburn	Democratic.

SPECIAL COMMISSIONERS	Vote for TWO.
HENRY BRADLEE, of Medford	Democratic.
LYMAN DYKE, of Stoneham	Republican.
JOHN J. DONOVAN, of Lowell	Democratic.
WILLIAM E. KNIGHT, of Shirley	Prohibition.
ORSON E. MALLORY, of Lowell	Prohibition.
EDWIN E. THOMPSON, of Woburn	Republican.

APPENDIX K

SKETCH OF POLLING PLACE

SUGGESTIONS TO VOTERS

Give your name and residence to the ballot clerk, who, on finding your name on the check list, will admit you within the rail and hand you a ballot.

Go alone to one of the voting shelves and there unfold your ballot.

Mark a cross X in the square at the right of the name of each person for whom you wish to vote. No other method of marking, such as erasing names, will answer.

Thus, if you wished to vote for John Bowles for Governor, you would mark your ballot in this way: —

GOVERNOR	Vote for ONE.	
JOHN BOWLES, of Taunton	Prohibition.	X
THOMAS E. MEANS, of Boston	Democratic.	
ELIJAH SMITH, of Pittsfield	Republican.	

If you wish to vote for a person whose name is not on the ballot, write, or insert by a sticker, the name in the blank line at the end of the list of candidates for the office, and mark a cross X in the square at the right of it.

Thus, if you wished to vote for George T. Morton, of Chelsea, for Governor, you would prepare your ballot in this way: —

GOVERNOR	Vote for ONE.	
JOHN BOWLES, of Taunton	Prohibition.	
THOMAS E. MEANS, of Boston	Democratic.	
ELIJAH SMITH, of Pittsfield	Republican.	
George T. Morton, of Chelsea		X

Notice that for some offices you may vote for "two" or "three" candidates, as stated in the ballot at the right of the name of the office to be voted for, e. g.: "COMMISSIONERS OF INSOLVENCY. Vote for THREE."

FORM OF AUSTRALIAN BALLOT

If you spoil a ballot, return it to the ballot clerk, who will give you another. You cannot have more than two extra ballots, or three in all.

You cannot remain within the rail more than ten minutes, and in case all the shelves are in use and other voters waiting, you are allowed only five minutes at the voting shelf.

Before leaving the voting shelf, fold your ballot in the same way as it was folded when you received it, and keep it so folded until you place it in the ballot box.

Do not show any one how you have marked your ballot.

Go to the ballot box and give your name and residence to the officer in charge.

Put your folded ballot in the box with the certificate of the Secretary of the Commonwealth uppermost and in sight.

You are not allowed to carry away a ballot, whether spoiled or not.

A voter who declares to the presiding official (under oath, if required) that he was a voter before May 1, 1857, and cannot read, or that he is blind or physically unable to mark his ballot, can receive the assistance of one or two of the election officers in the marking of his ballot.

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